

United States  
Circuit Court of Appeals

For the Ninth Circuit. 7

L. F. KELLY, F. H. DOLAN, et al.,  
Appellants,  
vs.

ANAHEIM FIRST NATIONAL BANK, a Na-  
tional Banking Association, and J. V. HOGAN,  
Receiver,  
Appellees.

Supplemental Transcript of Record  
(Reporter's Transcript and Exhibits)

Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division.

FILED

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PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States  
For the Southern District of California  
Central Division

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Hon. William P. James, Judge Presiding  
Law No. 7522-J

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L. J. KELLY, F. H. DOLAN, BEN BAXTER,  
S. JAMES TUFFREE, F. A. YUNGBLUTH,  
MINNIE PALMER (formerly known as Min-  
nie Baxter), M. DEL GIORGIO, JENNIE  
POMEROY, J. W. TRUXAW, J. J. DWYER,  
M. E. DAY, ERNEST F. GANAHL, FRANK  
BAUM and JOSEPHINE BAUM, husband  
and wife,

Plaintiffs,

vs.

ANAHEIM FIRST NATIONAL BANK, a na-  
tional banking association, JOHN DOE COM-  
PANY, a corporation, et al.,

Defendants.

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REPORTER'S TRANSCRIPT  
OF  
TESTIMONY AND PROCEEDINGS ON TRIAL

## Appearances:

Joseph Scott, Esq.,  
Edward C. Purpus, Esq.,  
Charles C. Montgomery, Esq.,  
Charles C. Montgomery, Jr., Esq.,  
A. H. Risse, Esq., and  
William J. Heinz, Esq.,  
For the Plaintiffs.

Dockweiler & Dockweiler, by  
Henry I. Dockweiler, Esq., and  
Benjamin Chipkin, Esq., and through  
J. V. Hogan, Receiver of same,  
For the Defendants.

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Los Angeles, California,  
Tuesday, July 20, 1937, 10:00 A. M.

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The Court: Are you ready, gentlemen, in this matter against the Anaheim Bank?

Mr. Chipkin: We are, your Honor.

Mr. Scott: If your Honor please, in this matter I desire to make a motion for the substitution in place of myself as attorney for the several plaintiffs whom I represent. I desire to move the court to substitute in place of myself Charles C. Montgomery, Charles C. Montgomery, Jr., Edward C. Purpus, and A. H. Risse, who represents our office, if your Honor please, and myself. I will say that I understood there was to be a continuance of this

case by stipulation. Apparently counsel have not gotten together in that respect, and I have been somewhat handicapped because Mr. Hitchcock of my office was all ready to try this case originally on the date set for trial, and his vacation comes at this time so he is not available. So Mr. Risse will represent my office to a large extent. I will try and watch the proceedings as far as I may, but we are pretty short-handed.

Mr. Montgomery, Sr.: I think I owe your Honor an apology. I thought I had a stipulation arranged, but it subsequently developed that it was not arranged.

Mr. Chipkin: We would have agreed, but it was conditioned upon another case that the other side did not [2\*] agree upon. It was pending for a number of years and has been adjudicated in another case. I do not think counsel stand taken at a disadvantage.

The Court: I will hear a statement from any counsel for any of the plaintiffs, to make clear just what you have here that is controverted and in dispute as questions of fact.

Mr. Montgomery: I desire now to file a waiver of jury trial.

The suit, your Honor, is to recover payments that were made by the stockholders of the Anaheim First National Bank, a National banking association, in

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

1931, of \$175 a share, the stockholders' liability being \$100 a share. They made this not as a voluntary contribution but to purchase, as they described it, the deficiency in the bond account. It seemed that the bond account had depreciated in value to the extent that the bank examiner advised them that that deficiency would have to be made up and that they could buy an interest in the bond account.

The bank ran for a couple of years after that then went into the hands of a conservator, who handled it for a period of one year, and then in 1934 the Receiver was appointed by the Comptroller of Currency, and at that time the Receiver took all the assets of the bank, including the bonds in which these parties had, as they supposed, purchased an interest, and the bonds have ever since been [3] held by him, with various changes made—various sales, I should say, until he has at the present time, I think something like about \$20,000 of bonds on hand. But the Receiver did not hold these bonds for the benefit of, or as a separate account, or in any way arranged for these stockholders who put up their money so that they could get any excess out of the bonds.

The Court: Did the stockholders have to respond to any calls from the government Receiver?

Mr. Montgomery, Sr.: The Comptroller of Currency—I don't know as it appears in this suit—but the fact of the matter is that the Comptroller has levied an assessment on the stockholders, so that any

stockholder who paid his assessment would pay not only the 100 cents on the dollar on the stockholders' liability, but he would have paid \$275 by reason of these contributions.

Mr. Dockweiler: May it please the court, so far as—

Mr. Montgomery, Sr.: Pardon me, just a minute. (Counsel conferring privately.)

Mr. Montgomery: Will you agree to this waiver?

Mr. Dockweiler: Surely. As far as the defendant bank is concerned, in open court we stipulate to the waiver of jury trial.

I do not think, your Honor, that it will be necessary for us at this juncture to make any extended statement touching the defense, except to say this: That the defense [4] is, briefly this: That any and all contributions made by these plaintiffs and any others who may have made them pursuant to any agreement among themselves, or purported agreement with the bank itself, were merely voluntary contributions to repair the impaired capital of the bank, and as such, under the rules and practice governing national banks and the administration of national banks all contributions must be considered as having been made voluntarily and without expectation of reimbursement; and that it is immaterial whether, having made these contributions and the bank having been thereby permitted by the Comptroller to continue on for a couple of years more than otherwise it would have, and it being

immaterial that thereafter a levy of assessment was made, the contributions were voluntary contributions made, and necessarily so, under the practice of the banking administration, without expectation of reimbursement. And that will appear, your Honor, clearly as we adduce the evidence for the defense.

The Court: What defenses are alleged?

Mr. Dockweiler: Well, I take it, your Honor—would you prefer to indicate them?

Mr. Montgomery: Yes. Paragraph I is admitted, that F. K. Day is dead, but it is denied that, for lack of information and belief, M. E. Day succeeded to all of the right, title and interest. So I think Day is out of it, anyway, so we do not need to consider that paragraph. [5]

Mr. Dockweiler: Do we understand that Day is out for the purposes of this case?

Mr. Montgomery: For the purposes of this case; yes.

Mr. Chipkin: Ben Baxter is out also. We had a case separately filed by Ben Baxter which was dismissed by the plaintiff.

Mr. Montgomery: He is not a party here, anyway—oh, pardon me. Yes; Ben Baxter is out and Day is out and Frank Baum and Josephine Baum are out, so paragraph II may be disregarded.

It is admitted that the defendant Anaheim First National Bank is a national banking association organized under the statutes of the United States

known as the National Banking Act; and that said bank has its place of business in Anaheim, Orange County, State of California; that the said bank was declared insolvent by the Comptroller of the Currency of the United States of America on the 15th day of January, 1934, and that on that date the said Comptroller of the Currency appointed J. V. Hogan as Receiver of said bank, and that ever since the said time the said J. V. Hogan has been and now is acting in the performance of his duties as Receiver of said bank.

And then in paragraph IV it is admitted that on or about June 18, 1931, a depreciation existed in the bond account of said defendant Anaheim First National Bank; and that at said time the aforesaid F. K. Day and all of the plaintiffs [6] herein, except the plaintiffs M. E. Day and Josephine Baum, were stockholders in said bank. Then the balance of that paragraph is denied, and that is the allegation of the agreement to purchase the depreciation existing, etc.

Paragraph V is denied, that L. J. Kelly agreed to pay the sum of \$4,900 under the purported agreement.

Paragraph VI is admitted, that on or about January 15, 1934——

(Counsel conferring together privately.)

Mr. Montgomery: My error. That is denied. Well, that is the fact, isn't it, that on or about January 15, 1934, the said J. V. Hogan——

Mr. Chipkin: That is correct. That should be admitted.

Paragraph VI should be admitted, your Honor.

Mr. Montgomery: —as Receiver of said bank, took possession of all the assets of the said bank, including the said bond account, and liquidated the same.

Mr. Chipkin: You might say we denied the liquidation, of course.

Mr. Montgomery: He has not completed the liquidation. The matter is still pending and he has some on hand.

Then VII is denied. VII sets out that there is a failure of consideration by reason of the fact that this bond account was not devoted to our interests.

VIII is admitted, that on or about May 31, 1934, said [7] Comptroller of the Currency published his notice requiring all persons having claims against the bank to present their claims to the said J. V. Hogan, as Receiver, as aforesaid, with the legal proof thereof within three months from the said May 31, 1934.

As to IX, it is admitted that there was a presentation of the claim and that it was not paid; but it is alleged that it was not a valid claim.

Then, of course, the next cause of action is for a different stockholder and there would be the same allegations and admissions and denials with regard to that, and so on through.



The Court: In referring to paragraph I you said Day was out of it, also Baxter was out of it. What did you mean by that?

Mr. Montgomery: I mean to say that Day has abandoned the litigation and we do not represent them, and Baxter——

Mr. Chipkin: Filed a separate suit.

Mr. Montgomery: There was a separate suit filed on a stockholder's liability, I think, and Baxter endeavored to counter-claim there on the contribution to the bank, and the whole matter so far as Baxter and one other stockholder was adjudicated in the other suit. That suit was tried before Judge McCormick and a jury.

Mr. Dockweiler: Then, Mr. Montgomery, with reference to the counts, starting with count 15 or 16, I think that [8] those counts were merely for the relief wanted, but in the alternative and referring to the same contributions or advancements, whichever we choose to call them.

Mr. Montgomery: Yes; the same thing. In other words, this same contribution is pleaded in count 15 as a loan to the bank, which is merely another way of saying that it was not a voluntary contribution but it was expected to be repaid.

Mr. Dockweiler: And refers to the same matter.

Mr. Montgomery: And refers to the same contribution or same payment on that account.

I might, your Honor, at this time give you the two cases on which we rely. It sometimes is helpful to

have those in advance. One is *Dudley v. Citizens State Bank of Santa Monica*, 103 Cal. App. 433. I don't remember whether your Honor has a book-convenient, but if not, I can leave my volume right here.

The Court: I think I have it.

Mr. Dockweiler: That is to say, that is 103?

Mr. Montgomery: 103 Cal. App. 433. That holds that a contribution which is not a voluntary contribution is recoverable and there is an implied contract to repay it.

The Court: You say "not a voluntary contribution"?

Mr. Montgomery: Yes.

The Court: You claim that this was an involuntary contribution? [9]

Mr. Montgomery: Well, voluntary in the sense that the only consideration was the continuance of the bank. You see, our contention is that we thought we were buying something, as they express that, the depreciation in the bond account; and we contributed not only \$100 a share, which would be equal to our stockholders' liability, but it was \$175.

The other case is an early Northern District of Ohio case in the 42nd Federal, beginning at page 11 and the particular portion we refer to is on page 14

Mr. Dockweiler: May I note the name of that case?

Mr. Montgomery: Didn't I give that? Pardon me. *Booth v. Welles*.

Mr. Dockweiler: Thank you.

The Court: Substantially, then, you have only to introduce evidence as to the circumstances under which these contributions were made?

Mr. Montgomery: That is it.

Mr. Dockweiler: I think that is largely the problem, your Honor.

The Court: Yes.

Mr. Montgomery: I will call Mr. Tuffree. [10]

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S: JAMES TUFFREE,

a plaintiff herein, called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. S. James Tuffree.

Direct Examination

Q. By Mr. Montgomery: What is your business or occupation, Mr. Tuffree?

A. Orange grower.

Q. Have you been in the banking business?

A. Yes.

Q. Where do you live?           A. In Placentia.

Q. That is down in Orange County?

A. Yes, sir.

Q. How long have you lived there?

A. 45 years.

(Testimony of S. James Tuffree.)

Q. Were you one of the stockholders of the First National Bank of Anaheim?      A. I was.

Q. And were you a director?      A. I was.

Q. Did you make a payment into the bank in 1931 in connection with the bond account? [11]

A. I did.

Q. What was your contribution?

A. \$175 a share.

Q. How many shares did you have?

A. \$3,500—twenty.

Q. What is that?      A. Twenty.

Q. You actually paid your money in?

A. Yes, sir.

Q. Who did you pay it to?

A. I paid it into the bank, I think the cashier, Mr. Phegley.

Q. Has any of that money been returned to you?

A. It has not.

Q. Have you received anything on account?

A. No, sir.

Q. Now, before you made the contribution was there some meeting of the board of directors?

A. There was.

Q. Were you present at that meeting?

A. I was.

Mr. Montgomery: May we request if you have those minutes? We might read those in.

Mr. Dockweiler: Yes. As a matter of fact, Mr. Montgomery, I have copies of the minutes and for

(Testimony of S. James Tuffree.)

convenience, if you prefer to introduce the copy, I will be very happy [12] to have that done.

Mr. Montgomery: May I have that, then?

Mr. Dockweiler: Which is the meeting that you first want? Or it might—well, yes; suppose that you indicate which meeting you have in mind, first.

Mr. Montgomery: Q. What was the meeting at which this matter was taken up, do you recall?

A. As I recall, Bank Examiner Lamm was present at this meeting.

Q. Do you remember the date of it?

A. No; I do not.

Mr. Montgomery: Now, if I may have just a second. There were two meetings and I forgot now which one it was.

Mr. Chipkin: I think the one you want is July 17, 1931.

Q. By Mr. Montgomery: Are you speaking of a meeting prior to the one where you made your contribution, where Mr. Lamm was present?

A. Yes, sir.

Q. You are speaking, then, of a meeting where some notes were put up? A. No, sir.

Q. Who else was present at that meeting, if you recall? A. How was that?

Q. Who else was present at that meeting?

A. I think most of the board of directors were present. [13] Mr. Lamm requested their presence and they came in to this meeting.

(Testimony of S. James Tuffree.)

Q. This was not the meeting where they made the levy of \$175 a share, was it?

A. It was the meeting where Mr. Lamm suggested to us how——

Q. How to handle the situation?

A. How to handle the situation.

Q. Did what transpired at that meeting have anything to do with the contribution that you thereafter made?

A. He did not speak of it as a contribution.

Q. Might we be more accurate, then, and call it a payment or a purchase?

A. Purchase of depreciation.

Q. Will you state what took place at this first meeting that you mentioned?

A. Mr. Lamm explained to us that because of depreciation in the bond account the capital of the bank had been impaired and wanted to know from the directors just what they proposed to do. Various suggestions were talked over in order to take care of this depreciation of the bond account, but—that is, by the directors and officers of the bank—none of which seemed to be satisfactory to the Examiner, and I remember one distinct remark that he made. He said, “Well, boys, you are going to have to fish or cut bait, one of the two.” I remember that expression. And [14] I think one of the directors asked—I don’t recall which one—if he had

(Testimony of S. James Tuffree.)

any suggestions to make. And I think that, as I remember and recall—I know that he made this suggestion: That if the directors wanted that bank to remain open that they would have to purchase that depreciation in order to keep the bank open, and that they would have to get that money from outside of the bank; they would have to obtain that money from some other source and bring that in in the way of new capital. And then he proceeded to tell us how that had been accomplished or how it could be accomplished.

Q. What did he say with regard to the accomplishment?

A. As I recall, he suggested the purchasing of the amount of depreciation in the bonds; in other words, to make up the depreciation by the loan of cash to the bank.

Mr. Montgomery: Now, if you have that meeting of June 18th I would like to see that, I mean a copy.

Mr. Dockweiler: Yes; June 18th. (Handing paper to counsel.)

Q. By Mr. Montgomery: I show you a copy of the minutes, in lieu of the original, of a meeting held on the 18th day of June, 1931. Were you present at that meeting?      A. Yes, sir.

The Court: Do those minutes show who was present?

Mr. Montgomery: Yes. The directors present were—he has listed them here and his name is one

of those who is, [15] listed. I will offer the minute record as Plaintiffs' Exhibit 1.

The Clerk: Plaintiffs' Exhibit 1.

## PLAINTIFFS' EXHIBIT No. 1.

### MINUTE RECORD

Meeting Held on the 18th day of June, 1931.

The regular monthly meeting of the Board of Directors of the Anaheim First National Bank was held on the above date, President Wm. A. Dolan presiding:

Directors present were:

Wm. A. Dolan

J. H. Brunworth

Ed Kelly

F. C. Rimpau

S. James Tuffree

F. H. Dolan

L. J. Kelly

Frank Baum

Ben Baxter

Ernest F. Ganahl.

Minutes of the last regular meeting were read and approved.

Loans from No. 6008 to 6112 were read and on motion by S. James Tuffree, seconded by J. H. Brunworth, were approved.

On motion by S. James Tuffree, seconded by L. J. Kelly, expense items for the month ending with the date of this meeting were approved.



(Testimony of S. James Tuffree.)

It was moved by Ben Baxter, seconded by F. H. Dolan, and carried, that a committee be selected to collect \$175.00 per share from stockholders, to be used to purchase depreciation in bond account. A total of 577 shares were represented by directors present, all of whom agreed to pay at the above rate.

The President appointed a new Bond Committee, consisting of:

S. James Tuffree

Ernest F. Ganahl

Ben Baxter

Wm. A. Dolan

WM. A. DOLAN,

President.

ROSS L. PHEGLEY,

Secretary.

---

Q. By Mr. Montgomery: Now, was a committee appointed for the purpose of collecting \$175 a share from the stockholders?      A. Yes, sir.

Q. Do you recall who was on that committee?

A. I think that the committee consisted of the names that were on that list that you submitted. I don't recall.

Q. You were one of the committeemen?

A. I was one of the committee; yes, sir.

Q. Mr. Ganahl and Baxter and W. A. Dolan?

(Testimony of S. James Tuffree.)

A. I think so.

Q. Was any bank examiner present at that meeting?  
A. I don't recall.

Q. Did you talk to any other bank examiner in regard to purchasing the depreciation?

A. No, sir.

Q. By the Court: Was this other meeting that you spoke of, where Mr. Lamm, the examiner, was present before this meeting or after?

A. The meeting that Mr. Lamm attended with the directors was held previous to the appointment of the committee, as I recall.

The Court: I see. [16]

Mr. Montgomery: May we have the minutes of the meeting of July 17, 1931?

Mr. Dockweiler: I find I have a copy of that. These are going into evidence, are they?

Mr. Montgomery: Yes.

Mr. Dockweiler: Or what is the purpose?

Mr. Montgomery: That is what we are doing.

Mr. Dockweiler: Has one already been introduced?

Mr. Montgomery: The meeting of June 18, 1931.

Mr. Dockweiler: That is Plaintiffs' Exhibit No. 1, is it?

Mr. Montgomery: Yes.

Q. I now show you a copy of the meeting of July 17, 1931. Do you recall being present at that meeting?  
A. Yes, sir.

Testimony of S. James Tuffree.)

Mr. Montgomery: We will offer the meeting of July 17, 1931, in evidence as Plaintiffs' Exhibit No. 2.

PLAINTIFFS' EXHIBIT No. 2.

MINUTE RECORD

Meeting Held on the 17th Day of July, 1931

The regular monthly meeting of the Board of Directors of the Anaheim First National Bank was held on the above date, President Wm. A. Dolan presiding;

Directors present were:

Wm. A. Dolan

Ed Kelly

Frank Baum

S. James Tuffree

L. J. Kelly

J. H. Brunworth

F. C. Fimpau

Minutes of the last regular meeting were read and approved, as were likewise the minutes of the special meeting of June 30, 1931.

Loans from No. 6113 to 6199 were read and on motion by S. James Tuffree, seconded by L. J. Kelly, were approved.

On motion by Frank Baum, seconded by J. H. Brunworth, expense items for the month ending with date of this meeting were approved.

(Testimony of S. James Tuffree.)

The following resolution was offered by S. James Tuffree, seconded by J. H. Brunworth, and carried:

Resolved, that the \$115,650 which has been paid in by stockholders at the rate of \$175.00 per share for the purchase of bond depreciation, and the \$25,000 now held on books of the Bank in Reserve Account, be applied as follows:

Take up five notes of \$6000.00 each formerly placed in Bank's assets by certain stockholders on account of bond depreciation.

The balance of said amount to be applied directly against the Bond Account of this Bank on account of estimated depreciation, which will reduce the present total of Bond Account by \$110,650. Be it further resolved that as further payments be received from stockholders on account of purchase of bond depreciation, that such sums shall be applied on Bond account as above specified.

Adjournment,

WM. A. DOLAN,

President.

ROSS L. PHEGLEY,

Secretary.

---

Q. Now, was there some discussion on the meeting of July 17, 1931, as to the intention in making this purchase and of how it was to be paid back?

(Testimony of S. James Tuffree.)

A. It was to be paid back as and when the bank could pay that back out of its bond appreciation, or as the bonds appreciated in value. It was to be paid back in that way.

Q. Did you know at the time you made your contribution or purchase, I should say, what your liability as a stockholder was? [17]

A. I knew of my stockholder's liability when I first purchased my stock.

Q. You knew it at that time? A. Yes, sir.

Q. And at all times subsequently?

A. Yes, sir.

Q. What was your understanding as to your stockholder's liability?

A. That we were liable for——

Mr. Chipkin: Objected to, your Honor, as being incompetent, what his understanding is.

Mr. Dockweiler: I would also raise the objection that it is immaterial, your Honor, on the ground that contributions to a bank by directors or stockholders are a wholly independent matter from stockholders' liability.

The Court: You may have the objection. I want to hear the evidence. You may have the objection and exception, and I will overrule the objection.

The Witness: Answer?

Mr. Montgomery: Yes, sir.

A. I did know what the stockholder's liability was.

(Testimony of S. James Tuffree.)

Q. No. But I say, what was it? A. \$100.

Q. \$100 a share? A. Yes, sir.

Q. Then your contribution was what? [18]

A. \$175.

Mr. Montgomery: You may cross-examine. [19]

### Cross Examination

Q. By Mr. Dockweiler: Mr. Tuffree, how long were you a director of this Anaheim First National Bank, that is, commencing with what year?

A. I think all told, approximately from three to four years.

Q. That is prior to 1931?

A. No. I believe possibly it was in '28, 1928.

Q. In other words, you started in 1928 and continued up until the time the bank was taken over by this receiver, Mr. Hogan, the gentleman——

A. (Interrupting) As I recall.

Q. Yes. In other words, from about 1928 to 1934?

A. May I fix the time approximately? I first became affiliated with the First National Bank of Anaheim just prior to the time that Mr. Dolan sold the bank to Mr. Baum. I purchased some stock during the time that Mr. Dolan owned the bank with his brother and other old settlers that were interested in that bank. I was not a resident of Anaheim, but I have some business connections in Anaheim and became affiliated with the bank just prior to the time Mr. Dolan sold it to Mr. Baum.

Q. Yes. Then you think that is around 1928?

(Testimony of S. James Tuffree.)

A. I would say approximately so.

Q. Yes. And you continued as a director up until the time that the comptroller of the currency took the bank over [20] in 1934?

A. That is right.

Q. Now, you attended the meetings with regularity, that is, the directors' meetings?

A. I think so.

Q. In other words, you attended many of the directors' meetings, did you not?

A. Yes, sir.

Q. You would say about once a month, would you not, on the average?

A. Approximately so.

Q. And at those meetings the condition of the bank as to its assets and liabilities, and possibly capital impairment, was often discussed, was it not, we will say, beginning early in 1930?

A. I would say that it was discussed after Mr. Baum became attached with the bank quite frequently.

Q. Of course, the depression had meanwhile swept over the country, and in early 1930 the bank—exception had been taken to the condition of the bank by Mr. Baum, the bank examiner, had it not?

A. Mr. Baum was not the bank examiner. Mr. Baum was the purchaser, the man that purchased Mr. Dolan out.

Q. Mr. Lamm, the bank examiner, he had explained to the Board, had he not, on several occasions that the Comptroller did not consider the

(Testimony of S. James Tuffree.)

bank in a good financial condition; [21] that its capital had been impaired?

A. Not during the years that I was on the Board.

Q. No. I am saying, beginning with early 1930.

A. I don't recall.

Q. Well, maybe I can refresh your mind, Mr. Tuffree, by referring you to the directors' meeting of July 16, 1930. And, for the purposes of letting the witness refresh his memory I would like to give him the original minute book, with two letters attached to the minutes, recordation of minutes. Now, you have before you the minutes of July 16, 1930. You recall having attended that meeting, do you not? It would appear that your name is on the list?

A. July the 16th I was not present, according to the minutes.

Q. Well, we will take the next meeting, which is—

A. August.

Q. —August 20, 1930. Now, you were present at that meeting, were you not?

A. Apparently.

Q. Yes. And it would appear, would it not, that the minutes of the last regular meeting were read and approved?

A. Yes.

Q. And the last regular meeting prior to that was this July 16th meeting, was it not, the previous month's meeting?

A. Yes.

Q. And I will call your attention, Mr. Tuffree, to two [22] letters that are attached to and made a part of the minutes of July 16, 1930, and are the



(Testimony of S. James Tuffree.)

two letters referred to, or purporting to be the two letters referred to in the minutes under this entry which is a part of the minutes, and I am now reading from the minutes of July 16, 1930: "Letters from the Treasury Department, addressed to the Board of Directors of the Anaheim First National Bank, dated July 2nd, 1930, was read and President was instructed to reply to this letter, copy of which reply is being held on file at this bank."

Mr. Montgomery: Now, may I interpose an objection at this time and ask what counsel's purpose is in going back to a meeting a year or so before this particular purchase was made?

Mr. Dockweiler: The object I have in view, your Honor, is to show that the condition of this bank for a year and a half prior to these contributions, or as opposing counsel would term it, purchases of bond depreciation made, was in bad condition; that the directors knew it; that the matter was taken up with the Comptroller of Currency and the Comptroller of the Currency defined his position as to what would have to be the nature of the contribution.

The Court: Apparently at the time they did make the contribution the situation was exactly as you now represent it to have been at and prior to the time, so they knew it then and whatever response they made, they made in response to that condition. [23]

(Testimony of S. James Tuffree.)

Mr. Dockweiler: But I should like the opportunity to show a continuing knowledge by the officers of the bank of the conditions under which they could make their contributions, as defined.

The Court: Suppose you ask the witness generally as to his knowledge of the prior time and see whether he is able to respond without reference to the minutes.

Mr. Dockweiler: Yes.

Q. Do you recall whether or not at any meetings of the directors prior to July or June, 1930, any letters to or from the Comptroller of the Currency with reference to the Anaheim First National Bank were read to the directors?

Mr. Montgomery: Now, I object to that as immaterial, irrelevant and incompetent unless it is shown that it has to do with the particular purchase that they made.

Q. By Mr. Dockweiler: And with reference only—I will add this to my question: With reference to repairing the capital impairment of the bank?

Q. By the Court: Pardon me for interrupting you. You knew the situation as it was at the time you made your contribution, as has been explained. How long, to your knowledge, had that situation existed?

A. I don't remember this particular letter referred to that has just been read at this meeting.

(Testimony of S. James Tuffree.)

that I was not present. But I knew one thing, that shortly after Mr. Dolan sold the bank to Mr. Baum, that there was some transactions [24] in bonds which I personally did not approve of and so told Mr. Baum about.

Q. That was what date, about?

A. Well, it was in the interim between the time Mr. Dolan first sold and when he and his brother purchased back the controlling interest in the bank.

Q. Can you fix either date?

A. No. I should——

Q. Approximately?

A. No; I could not fix the date approximately.

Q. A year?

A. You see, this has been—the bank has been closed now for about three or four years, as I recall, about three or four years, and these happenings are back five or six years ago, so it is rather difficult for me to remember the details. I do know, however, your Honor, that there was certain bond transactions after Mr. Baum came in the bank which I did not approve of, and he offered to buy my stock out and when I offered to sell it to him, why, he refused to buy it.

Q. By Mr. Dockweiler: I will ask you whether you ever had any objections of yours to the way the bond account was being handled spread upon the minutes of the meetings of the directors, or did you

(Testimony of S. James Tuffree.)

ever take any further or other action than merely objecting to Mr. Baum?

Mr. Montgomery: I object to that as immaterial. We [25] are going now to a collateral issue. The situation is: The sole question is what was the intention and understanding and agreement at the time they made this purchase of the deficiency in the bond account. Now, if there is anything that bears upon his knowledge prior to that date, why, of course that would be material; but the fact that he objected to the handling of the bond account prior to this date would not have any materiality.

The Court: It is your position that a long-continued prior dangerous condition influenced them to understand that they could not expect the money back?

Mr. Dockweiler: That is it.

The Court: I see. I will allow you to answer.

Mr. Dockweiler: Do I understand your Honor's ruling on it to be——

The Court: He may answer the question.

The Witness: Would you reframe that question, please?

Mr. Dockweiler: Read the question.

(Question read by the reporter.)

A. No; I never had any—I never took any action before that, placed upon the minutes, but it was discussed in Mr. Baum's presence.

(Testimony of S. James Tuffree.)

Q. But that is the extent of your objections or the relief you sought to get as a director?

A. Well, in one point in instance, a simple instance, we had some stock, some water company stock which he wanted [26] to get—which he wanted to sell, some Anaheim Union Water Company stock which he did not know the value of. It is a local concern there in Orange County and he wanted to sell that stuff and buy some Fox Film. I am not in any way connected with the motion picture industry at all, but his idea was to sell some of those bonds and buy some of these other bonds.

Q. Well, briefly, you objected to that?

A. We objected and discussed it at the board of directors' meeting.

Q. But that was the extent of what was done, these maybe even heated discussions between you and Mr. Baum?

A. Yes; during the directors' meetings.

Mr. Dockweiler: I had asked a previous question, may it please the court, to which Mr. Montgomery interposed an objection as to whether or not this gentleman had ever heard read that exchange of letters which I referred to as being a part of the minutes of the meeting of July 16, 1930, and I do not think your Honor has ruled upon that.

The Court: Well, he may answer. Of course, I expect to hear your arguments on the proposition

(Testimony of S. James Tuffree.)

which you propose to maintain here. I am not making up my mind upon the law now but am allowing him to testify.

A. I was not present when this letter was read from the Treasury Department, as the minutes will show.

Q. By Mr. Dockweiler: Well, did you ever hear it read [27] at the subsequent meeting or at any other meeting?

A. Not this particular letter referred to.

Q. And you did not hear that letter discussed?

A. Not at this meeting.

Q. Well, at any time?

A. Not previous to the writing of these letters. I was not at this meeting.

Q. Well, subsequent to the writing of the letters? I have referred to a letter of July 2nd, 1930, addressed by E. H. Gough, Deputy Comptroller, to the Board of Directors, Anaheim First National Bank, and a purported reply to it by W. A. Dolan, as president of the Anaheim First National Bank, under date of July 17th, to E. H. Gough, Deputy Comptroller. Do you recall ever having heard those letters discussed subsequent to the date of July 16, and bearing in mind that Mr. Dolan's purported answer is dated July 17th, the day after the meeting?

A. I don't recall.

Q. Yes. Well, I will refer you to the minutes of the meeting of September 17, 1931, a little over a

(Testimony of S. James Tuffree.)

year later. For the purposes of refreshing your recollection, Mr. Tuffree, I expose to you what purports to be the minutes of the meeting of the directors of September 17, 1931, and I will ask you whether or not you recall having been present at that meeting?

Mr. Montgomery: I object to that as subsequent to the [28] transaction in question, and unless it amounts to an interpretation of what had previously taken place it is immaterial, irrelevant and incompetent.

Mr. Dockweiler: That is what we claim it to be, a matter of interpretation, as it was a matter of continuous correspondence between the Comptroller and——

The Court: We will hear it and the objection may be overruled and exception noted.

Mr. Dockweiler: Yes.

A. Was I present?

Q. Yes. A. Yes, sir.

Q. Inviting your attention to only that portion of the minutes which state this: "A letter from the Treasury Department dated Aug. 20th and Mr. Dolan's reply thereto dated September 8th were read and ordered filed." Now, there appear to be attached to the minutes of that meeting the two letters referred to, and I will ask you whether you remember the reading of those two letters on that occasion?

(Testimony of S. James Tuffree.)

Mr. Montgomery: I would make particular objection to the letter from the Comptroller as not being binding on us.

Mr. Dockweiler: A part of the general transaction, your Honor, preliminary to Mr. Dolan's answer, Mr. Dolan being at that time the president of the bank. But if it would be stipulated that the Mr. Dolan referred to is the president of the bank—I should like to ask that one question. [29]

Mr. Montgomery: I think he was. Wasn't he?

Mr. Dockweiler: William A. Dolan.

Q. Mr. Tuffree, for the purposes of the record, will you state whether Mr. William A. Dolan was president of the bank at the time of this meeting in September, 1931?

A. September 8th, you say?

Q. Well, September 17, 1931.

A. I think he was.

Q. He was, was he not? He had been for a considerable time prior thereto, for something like, would you say, a year and a half or two years pretty near?

A. Possibly so.

Q. Possibly two continuous years prior thereto. Your answer would be "Yes"?

A. As I remember these letters being read?

Q. On the question of how long prior to 1931, September, 1931, was Mr. W. A. Dolan president of the bank?



A. AS to the time I could not swear just how long. I think that he was—I know that he again became president after Mr. Baum had sold out to Mr. Dolan and his brother.

Q. Then, have you any recollection as to when Mr. Baum sold out to W. A. Dolan and his brother?

A. No; I have not.

Q. Refreshing your memory on those two letters, what is your recollection as to whether you heard them read or not?

A. I remember having heard some of the letters read [30] from the Treasury Department.

Q. And Mr. Dolan's drafted replies to them, as well?

A. The reply was usually read; yes, sir.

Q. And I suppose that the letter was from the Treasury and the proposed reply was a matter of general discussion among the directors, is that not right?

A. Yes, sir.

Q. As a matter of fact, wasn't it about the most important business before the meeting whenever that problem of impairment of the capital of the bank was discussed?

Mr. Montgomery: Now, that is indefinite as to time.

Mr. Dockweiler: Well, we will say on this occasion in September, 1931.

A. I think that the impairment of all the banks' capital was discussed in a general way and this bank

(Testimony of S. James Tuffree.)

possibly in particular in regards to its bond account and the depreciation, which was quite general because of the times that we were going through at that particular time.

Q. And was discussed for many months prior to September, 1931, was it not, between the directors individually, the directors and the officers, and the directors in sessions at directors' meetings, was it not?

A. I think that all of the bank's official affairs were discussed at every meeting.

Q. Wasn't it a fact that the bank was being pressed by the Examiner, Mr. Lamm, to correct a bad condition, at least [31] what was called a bad condition by himself and the Comptroller's office?

A. In regard to the depreciation of the bonds.

Q. In regard to the capital, that is, impaired capital of the bank?

A. He discussed the bond depreciation with the directors; yes, sir.

Q. And, of course, the bond depreciation had its reflection in a bad capital condition, did it not?

A. Evidently.

Q. In other words, many of these bonds, we will say, were bought at, for instance, taking 100 as the standard figure, and had gone away down below 50, had they not?

(Testimony of S. James Tuffree.)

A. Some of them had very badly depreciated.

Q. And others not so badly. But, in other words, it did impair the fiscal condition of the bank?

A. Yes, sir.

Q. And was a matter of discussion for many months?

A. I know it came up for discussion. As to how long, I don't recall just the exact length of time.

Mr. Montgomery: I think, your Honor, we could concede that it was for at least a year prior to this, and maybe longer, if they want it, that there was that condition and it was under discussion.

Q. By Mr. Dockweiler: Now, I will ask you refresh your mind on paragraphs 1 and 4 of the letter of August 20, 1931, [32] from Deputy Comptroller Gough to the Board of Directors of the Anaheim First National Bank.

Mr. Montgomery: May I inquire, have you copies of these letters?

Mr. Dockweiler: Yes. As a matter of fact, I think it would probably be simpler. I have given to opposing counsel what we will tentatively regard as the copies, your Honor, and if they wish to compare them we will hold ourselves ready to compare them; and if they are agreeable to letting them go in under stipulation as being copies—one is a certified copy—under the general law as to certification by the Comptroller's office.

(Testimony of S. James Tuffree.)

I would like to read those two paragraphs in order to you some questions. Reading from the August 20th letter of the Deputy Comptroller Gough to the Board of Directors of the Anaheim First National Bank.

“Gentlemen:

“A capital impairment of \$94,400.53 was shown by National Bank Examiner W. J. Waldron in his report of an examination of your bank completed June 24, which it is understood has been provided for by voluntary and unconditional contributions of directors and shareholders. The contributions up until July 17, 1931, are reported to have amounted to \$115,650, of which \$73,775 was cash, and \$41,875 in the form of fourteen ninety-day notes. There were still eighteen stockholders to [33] interview and obtain contributions from.”

Then the fourth paragraph of the same letter:

“Although you have been previously advised in this regard this office wishes to bring to your attention again at this time the fact that contributions made to restore capital should be made unconditionally and without expectation of reimbursement. Please advise in your reply to this letter that you have the correct understanding in this regard.”

(Testimony of S. James Tuffree.)

Now, Mr. Tuffree, was——

Mr. Montgomery: In order to keep my record straight, may it be understood that my objection runs to this letter as being subsequent?

The Court: Yes.

Mr. Montgomery: And not binding upon us?

The Court: It will be so agreed and exception will be carried in the record in your favor.

Mr. Dockweiler: Now you are permitted to answer the question.

Q. Was that phase of the letter of the Comptroller's office discussed as to the voluntary character without expectation of reimbursement?

A. You will notice that the Examiner W. J. Waldron is mentioned here.

Q. That is it.

A. I want to say that Mr. Waldron never offered any [34] solution as far as the bank was concerned as to how this could be taken care of. It was Mr. Lamm made the suggestion, not Mr. Waldron.

Q. But Mr. Waldron did make a report on the bank?

A. And subsequent to our loan.

Q. Well, now, as of June 24th he is reported to have completed an examination and ascertained an impaired capital. Now, I will ask whether or not those two paragraphs of the Comptroller's letter were discussed by the directors at that meeting?

A. The letter of August the 20th, you mean?

(Testimony of S. James Tuffree.)

Q. Yes.

A. Yes; I think that they were discussed.

Q. Was Mr. Dolan, as president of the bank, or anyone else, directed to reply to the Comptroller's office that you gentlemen had not made voluntary contributions without expectation of reimbursement, but that they were purchases of a depreciation in a bond account and that the bank was obligated to pay the money back?

Mr. Montgomery: Well, I object to the question as multifarious. Let us find out what the directions were.

Mr. Dockweiler: Well, I will ask the simple question:

Q. Did the directors or any of them direct or instruct Mr. Dolan, as president of the bank, or anybody else, to answer the Comptroller by stating any position that may have been discussed at the meeting as the position of the [35] directors with reference to those two paragraphs of the Comptroller's letter?

A. I don't know whether Mr. Dolan replied to that letter of his own volition or at the request of the Board.

Q. But his reply was read, was it not?

A. It says here in those minutes here that the letter from the Treasury Department of August 20th and Mr. Dolan's reply thereto, dated September the 8th, were read and ordered filed.

(Testimony of S. James Tuffree.)

Q. And ordered filed. So, then, do you recall that letter in extenso was read and Mr. Dolan's draft of reply or actual reply, whatever it was, at the time?

A. I don't recall the particulars.

Q. Yes.

A. That is 1931 and this is 1937.

Mr. Dockweiler: Yes. At this time I should like to introduce into evidence as Defendant's Exhibit 1 the letter addressed to the Board of Directors of Anaheim First National Bank, Anaheim, California, dated August 20, 1931, and signed by E. H. Gough, Deputy Comptroller of the Currency, and for convenience, in view of the fact that the photostat which is prepared under Section 884 of the Revised Statutes is a little difficult to read, I have had a bold copy prepared, your Honor.

Mr. Montgomery: We have no objection to the copy, but we have an objection to the letter which we previously [36] stated.

The Court: Yes.

Mr. Montgomery: As immaterial, irrelevant and incompetent.

Mr. Dockweiler: I am perfectly willing also, for the purposes of economy, to have any comparisons made that the gentlemen may wish to make and if there are any errors—we have carefully gone through that once before, your Honor—but if there are any

(Testimony of S. James Tuffree.)

errors found, we will be very happy to make the necessary corrections.

The Clerk: Defendant's A.

## DEFENDANT'S EXHIBIT A.

### CERTIFICATE FOR CERTIFIED COPY

Treasury Department,

Office of the Comptroller of Currency—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, F. G. Awalt, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of a copy of the original letter addressed to the Board of Directors of the Anaheim First National Bank, Anaheim, California, dated August 20, 1931, and signed by E. H. Gough, Deputy Comptroller, and of the whole of such original on file and of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this twenty-ninth day of January, A. D. 1936.

[Seal] (Signed) F. G. AWALT,

Acting Comptroller of the Currency.



(Testimony of S. James Tuffree.)

Sa-12      FU      Waldron      Harris      5-10228

August 20, 1931.

Board of Directors,  
Anaheim-First National Bank,  
Anaheim, California.

Gentlemen:

A capital impairment of \$94,400.53 was shown by National Bank Examiner W. J. Waldron in his report of an examination of your bank completed June 24, which it is understood has been provided for by voluntary and unconditional contributions of directors and shareholders. The contributions up until July 17, 1931, are reported to have amounted to \$115,650, of which \$73,775 was cash and \$41,875 in the form of fourteen ninety-day notes. There were still eighteen stockholders to interview and obtain contributions from.

Please write this office on September 1 and advise whether the committee appointed to collect from shareholders has succeeded in making the additional collections, and submit a list showing the individual cash contributions, and the contributions that have been made in the form of notes. The notes should be fully described.

Also please have executed and forwarded the enclosed form marked "affidavit" certifying to the fact that capital has been restored to \$75,000.

Although you have been previously advised in this regard this office wishes to bring to your at-

(Testimony of S. James Tuffree.)

tention again at this time the fact that contributions made to restore capital should be made unconditionally and without expectation of reimbursement. Please advise in your reply to this letter that you have the correct understanding in this regard.

You are requested also to advise the collections that have been made of slow and doubtful loans and loans especially mentioned; the further collections expected soon; whether you have sold or have prospects of selling any of the real estate owned; have reduced aggregate borrowed money, obligations at the Citizens National Bank, Los Angeles, to \$75,000, the limit prescribed by Section 5202, U. S. R. S. and have succeeded in further reducing the total of the bank's borrowed money, which was \$188,735 on the date of examination.

You are requested to attach to your reply a copy of your daily statement as of the preceding business day, and to send duplicates of letter and statement to Chief National Bank Examiner T. E. Harris, 155 Montgomery St., Room 1103, San Francisco, Calif., and to National Bank Examiner W. J. Waldron, 1548 West Washington St., Santa Ana, Calif.

Respectfully,

Deputy Comptroller.

Enclosure

Mr. Montgomery: Counsel is going to put in the reply also?

Mr. Dockweiler: Yes. I think for the purposes of the record that we ought to put in the reply rather than attempting to read it from the minute book.

Mr. Montgomery: Yes.

Mr. Dockweiler: At this time defendant introduces as Exhibit B, Defendant's Exhibit B, copy of the letter of W. A. Dolan, as president of the bank, dated September 8, 1931, to E. H. Gough, Deputy Comptroller.

The Clerk: Exhibit B.

## DEFENDANT'S EXHIBIT B

September 8, 1931.

Mr. E. H. Gough, Deputy Comptroller,  
Treasury Department,  
Washington, D. C.

Dear Sir:

We have your favor of August 20 and wish to make the following reply to your letter of the above date.

Regarding the amount of \$94,400.53 which was shown by the National Bank Examiner as being a capital impairment, will say that the above amount was estimated on account of an estimated depreciation in our bond account. The following stockholders purchased the depreciation with the understanding that the bonds were to be held or exchanged with a view of the same liquidating the amount subscribed:

## (Testimony of S. James Tuffree.)

Wm. A. Dolan .....	Cash,	\$32,500.00		
F. H. Dolan	“	32,500.00		
Ben Baxter	“	1,750.00		
Lawrence J. Kelly	Note of \$4900,		dated July 11-31,	due 90 days
Ernest F. Ganahl	Note of \$1750,	“	“	7-31, due 6 months
Frank Baum	“	\$5250,	“	“
				6-31, due 90 days
S. James Tuffree	“	\$3000,	“	“
				3-31, due 90 days
				also, \$500 cash
Ed Kelly	“	\$9000,	“	“
				8-31, due 6 months
Fred C. Rimpau	Cash,	\$1925.00		
Sophie Rimpau	Cash,	\$1750.00		
F. A. Yungbluth	Note of \$1750,		dated July 14-31,	due 90 days
F. K. Day	“	\$875,	“	“
				14-31, due 90 days
Minnie Baxter	Cash	\$850.00,		
	Note of \$3000,	“	“	15-31, due 90 days
M. Del Giorgio	Note of \$875,		dated July 15-31,	due 90 days
Jennie Pomeroy	Cash,	\$2000,		
	Note of \$1500,		dated July 15-31,	due 90 days
D. A. Woodward	Note of \$1225,		dated July 16-31,	due 90 days
J. W. Truxaw	“	\$1750,	“	“
				16-31, due 90 days
J. W. Brunworth	“	\$5250,	“	“
				9-31, due 90 days

(Testimony of S. James Tuffree.)

Regarding the slow and doubtful loans, the following collections have been made:

H. G. Ames	\$150.00
W. M. Drennon	110.00
Henry J. Du Bois	985.00
V. W. La Mont	350.00
J. M. McDuell	Secured
H. B. Pearson	\$3000.00
Weber Book Store	75.
L. N. Wisser	100.

On other loans especially mentioned, the following amounts have been paid:

A. Auget	\$ 677.30
D. A. Collins	1000.00
Mrs. Julia Donnelly	4300.00
August Eltiste	300.00
Kurt Epstein	4103.12
J. J. Spitzer	4003.13
E. F. Gielow	1634.63
Geo. B. Creder	564.83
Lena Jay	1500.00
J. W. Johnson	200.00
H. M. Miller	250.00
Geo. A. Paige	300.00
Fred C. Rimpau	6000.00
Herman Stern	1500.00

We are negotiating a sale on the property, held under Real Estate, in the City of Los Angeles, and payment has been made on contract. We also have a prospect of selling the orange groves located in

(Testimony of S. James Tuffree.)

Orange County which, if consummated, will reduce our Real Estate considerably.

The borrowed money obligations at the Citizens National Bank have been paid in full.

We enclose form marked "affidavit" certifying to the fact that capital has been restored to \$75,000.

In compliance with your request, we attach herewith a copy of our daily statement as of September 5 and also enclose copy of same, and also duplicated of this letter, to Chief National Bank Examiner T. E. Harris and to National Bank Examiner W. J. Waldron.

The writer wishes to apologize for not answering this letter on September as I was on my vacation and this is the first opportunity I have had to reply. I trust that you will pardon the delay. I remain

Yours respectfully,

President.

WAD/DE

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Mr. Montgomery: We make no objection to Exhibit B, your Honor, because that states the understanding.

Mr. Dockweiler: Yes.

Now, subsequently I take it there was further discussion [37] of this bond impairment matter and the way to clarify it, was there not, in the next few weeks? In any event, you were still collecting

(Testimony of S. James Tuffree.)

money under the proposed document that had been circulated among the stockholders and bondholders; you were still collecting money under it, were you not?

A. I don't recall.

Q. But for all you know, the gentlemen directly in charge of what we would call the "contributions" and you call the "purchase" were going around, or they might have been going around collecting money under that?

A. Well, I was on that committee to go around to get these people to make this loan in order to keep our bank open; but I do not believe that we made any attempt after we received Mr. Waldron's report to—— that is, on my part, at least. I would not knowingly go around and ask anyone for a contribution of \$175 a share after Mr. Waldron objected to it in the way he did. I do not recall that I personally went around.

Q. Yes.

A. I could not very well go around and ask the stockholders to loan money to a bank after the Comptroller of the Currency, or Mr. Waldron here, as evidenced in this letter, objected. I know that there was for awhile, why, we were very active in trying to get this money to take care of the impairment of the capital.

Q. Now, I will ask you in refreshing your memory to [38] refer to the minutes of the directors'

(Testimony of S. James Tuffree.)

meeting of November 19, 1931, which I take it be the next regular monthly meeting after the one you have just testified to in——was it September? This is the second one. I will ask you whether you recall having been present at that meeting?

Mr. Montgomery: Is this another subsequent meeting?

Mr. Dockweiler: Yes.

Mr. Montgomery: I make the same objection that it was subsequent and not binding upon us. This does not purport to construe anything.

The Court: Gentlemen, I don't know what it is of course.

Mr. Dockweiler: May it be admitted temporarily, to be connected up? If it is not, it will be subject to a motion to strike your Honor.

The Court: Very well.

Q. By Mr. Dockweiler: I will invite your attention to that part of the minutes which reads as follows: "A letter from the Comptroller under date of October 30th was read and it was directed that a reply be made thereto." And now I refer to the letter from the Comptroller again, directed to Board of Directors, Anaheim First National Bank, purporting to be signed by E. H. Gough, Deputy Comptroller, dated October 30, 1931, and I will ask you whether you recall that having been read at the meeting of——

A. (Interrupting): No; I don't recall this letter. [39]



(Testimony of S. James Tuffree.)

Q. You don't recall the letter. You were present at the meeting, were you not, however?

A. According to these minutes, I was.

Q. Then would you say the minutes were untrue—

A. No; I would not say.

Q. —in that the letter was not read?

A. No, sir. I would lay my not remembering this in particular to a faulty recollection.

Q. Well, would you say it might have been read and that your recollection is faulty?

A. Possibly so.

Mr. Dockweiler: At this time we should like to introduce as Defendant's Exhibit C the minutes of the meeting of the Board of Directors held November 19, 1931, in the form of a copy from the minute book.

## DEFENDANT'S EXHIBIT C.

### MINUTE RECORD

Meeting held on the 19th day of November, 1931. The regular monthly meeting of the Board of Directors of the Anaheim First National Bank was held on the above date, President Wm. A. Dolan presiding.

Directors present were:

Wm. A. Dolan

Ernest F. Ganahl

L. J. Kelly

(Testimony of S. James Tuffree.)

J. H. Brunworth

Frank Baum

Ben Baxter

C. H. Myers

S. James Tuffree

Minutes of the last regular meeting were read and approved.

Loans from No. 6457 to 6535 were read and on motion by S. James Tuffree, seconded by J. H. Brunworth, were approved.

On motion by S. James Tuffree, seconded by C. H. Myers, expense items for the month ending with the date of this meeting were approved.

A letter from the Comptroller under date of October 30th was read and it was directed that a reply be made thereto.

Adjournment.

President

WM. A. DOLAN

ROSS L. PHEGLEY

Secretary

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Mr. Montgomery: We have no objection to the copy, but we make the same objection that it is subsequent and is irrelevant, incompetent and immaterial, an attempt to change the contract, or, rather it is an item of evidence attempting to change the contract that actually was made.

(Testimony of S. James Tuffree.)

The Court: I will let the exception show and the objection be presently overruled. I expect to hear you on the argument on all those questions, nevertheless.

Q. By Mr. Dockweiler: I note from the minutes what purports to be very little business at that meeting, except the reading of the letter from the Comptroller and I should [40] like to know whether or not at that meeting you have any recollection that there was discussion of that depreciation in the bond account and the point raised by the Comptroller in his letter, and I refer to this part of the letter, the paragraph second of paragraphs one and two, reading as follows: From the Comptroller of the Currency, letter of October 30, 1931.

“Gentlemen:

“Referring to the president’s letter of September 8, and particularly that portion regarding the depreciation in your bond account, please advise which of the shareholders’ notes aggregating \$40,125 placed in the bank in this connection which, with two exceptions, became due this month have been paid. In addition to these notes cash contributions of \$73,775 were reported to have been made by September 8 to provide for the heavy bond depreciation. In your reply please state whether you were successful in obtaining any additional collections from the remaining shareholders, and if so what they were in cash.”

(Testimony of S. James Tuffree.)

This being the second paragraph:

“It should be clearly understood by all parties concerned that these contributions are voluntary and unconditionally made, with no expectation of reimbursement from the profits or earnings of the bank.”

Now, I will ask you whether you recall on that occasion [41] any discussion as to what I would call voluntary contributions, what your counsel would call purchases, of the bond depreciation?

Mr. Montgomery: What was the question there the first part?

(First part of counsel's question read by the reporter.)

A. No; I don't recall any particular discussions in regard to that at this particular meeting.

Q. By Mr. Dockweiler: Having in mind these letters received by the board of directors, addressed to the board of directors of the bank, did it ever occur to you that the Comptroller of the Currency at Washington was insisting that whatever was gathered together in the way of additional capital for the repairment of the impaired capital should be free, untrammelled, unconditional, and wasn't that a matter of discussion between you men?

A. It might have been up for discussion, but we had already made this loan to the bank in order to take care of that depreciation, and the discussion in regard to it in view of these letters was nothing

(Testimony of S. James Tuffree.)

more nor less than telling us that after we had already made that loan in good faith——

Q. Did you ever advise in reply to any of these letters, or did the board, you being one of them, ever direct the president or any other officer to reply to the Comptroller, telling him that you did expect that you would get reimbursed through appreciation, or that you had bought the [42] depreciation which would redound to your benefit in the way of appreciation of the bond account if it ever occurred?

A. Personally, I never have written any letter to the Treasury Department.

Q. Well, did you as a director ever instruct the president or any other officer to do it?

A. I know certain letters were requested. Certain letters demanded an answer and these answers were made by the president.

Q. Yes. And you were familiar with the answer that the president made to the Comptroller, were you not?      A. Yes.

Q. That also being read, I take it, at the same meeting?      A. In a general way; yes.

Q. Or discussed as to what he should say in reply?

A. I don't recall just what our discussions were seven years ago, six years ago.

Mr. Dockweiler: At this time for the purposes

(Testimony of S. James Tuffree.)

of the record, having already introduced the copy of the minutes, we offer as Defendant's Exhibit 4 a copy of the letter dated October 30, 1931, addressed by Deputy Comptroller Gough to Board of Directors of Anaheim First National Bank.

The Court: Subject to the same objection and exception.

Mr. Montgomery: Yes, your Honor.

Mr. Dockweiler: And then what purports to be the answer thereto as appearing by the minutes, by a letter of [43] President W. A. Dolan to Gough, Deputy Comptroller, under date of November 20, 1931. And that would be exhibit?

The Clerk: E.

Mr. Montgomery: I think you said "4". The other one should be D and E.

The Clerk: D and E.

Mr. Dockweiler: Yes. In other words, the Deputy Comptroller's letter now being offered will be D—how could that be? We have already introduced—well, all right; D. And the president's reply to the Comptroller would be E?

The Clerk: E.

Testimony of S. James Tuffree.)

DEFENDANT'S EXHIBIT D

CERTIFICATE FOR CERTIFIED COPY

Treasury Department

Office of the

Comptroller of the Currency—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, F. G. Awalt, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of a copy of the original letter to the Board of Directors of the Anaheim First National Bank, Anaheim, California, dated October 30, 1931, and signed by E. H. Gough, Deputy Comptroller, and of the whole of such original on file and of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this twenty-ninth day of January, A. D. 1936.

[Seal]

(Signed) F. G. AWALT

Acting Comptroller of the Currency

(Testimony of S. James Tuffree.)

October 30, 1931

Board of Directors,  
Anaheim-First National Bank,  
Anaheim, California.

Gentlemen:

Referring to the president's letter of September 8, and particularly that portion regarding the depreciation in your bond account, please advise which of the shareholders' notes aggregating \$40,125 placed in the bank in this connection which, with two exceptions, became due this month have been paid. In addition to these notes cash contributions of \$73,775 were reported to have been made by September 8 to provide for the heavy bond depreciation. In your reply please state whether you were successful in obtaining any additional collections from the remaining shareholders, and if so whether they were in cash.

It should be clearly understood by all parties concerned that these contributions are voluntary and unconditionally made, with no expectation of reimbursement from the profits or earnings of the bank.

The president reported that you were negotiating a sale of the property in Los Angeles on contract at the time his letter was written and that you also had a prospect of selling the orange groves which if consummated would considerably reduce your "other real estate" account. Please advise whether you



(Testimony of S. James Tuffree.)

were able to close this sale and if so, on what terms, and give the amount of the payment made on the contract covering the sale of the city property.

Also advise of any further changes that have occurred in the loans unfavorably commented upon throughout the June report of examination, and of any further reduction made in the bank's obligations for money borrowed.

Respectfully,

(Signed) E. H. GOUGH

Deputy Comptroller

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## DEFENDANTS' EXHIBIT E

Anaheim, Calif.

November 20, 1931

Mr. E. H. Gough, Deputy Comptroller,  
Treasury Department,  
Washington, D. C.

Dear Sir:

"Your letter dated October 30, 1931, was read to the Board of Directors of this bank at its meeting held yesterday.

In reply to your question regarding the notes given by shareholders for bond depreciation, will say that the note given by J. J. Dwyer for \$1750 has been paid. The other notes are still held by this bank. We have not made any further collections from the remaining shareholders up to this date.

(Testimony of S. James Tuffree.)

In regard to "other real estate" held, will say that payment has been made on the property in Los Angeles and contract for sale is pending, also, sale of the orange grove has not been consummated but are using our best endeavors to sell same.

The following changes have been made in our loans since we wrote you on September 8, 1931.

H. G. Ames, is reducing monthly.

Anaheim Feed & Fuel, reduced to \$1893.08.

J & N Shop, reduced to \$128.83.

V. W. LaMont, reducing by monthly payments.

Jos. Sparkes, reduced \$100.

Weber Book Store, reducing monthly.

Walter Amstutz, reduced to \$4339.82.

E. A. Collins, paid in full.

Kurt Epstein, reduced to \$2285.41.

J. J. Spitzer, paid in full.

E. F. Gielow, reduced to \$1130.

J. W. Johnson, paid in full.

Victor G. Loly, reduced to \$250.

Edith O'Reilly, reduced to \$115.12.

George A. Paige, paid in full.

I also wish to advise that the bank has no borrowed money.

Trusting the above information is satisfactory, I remain

Yours respectfully,

President

(Testimony of S. James Tuffree.)

Mr. Montgomery: And objection to the reply as well.

The Court: Yes; it is understood.

Mr. Dockweiler: And the pertinent part of the reply that I have in mind, some of it being irrelevant and referring apparently to loans, is simply the first paragraph.

“Mr. E. H. Gough, Deputy Comptroller,

“Dear Sir:

“Your letter dated October 30, 1931, was read to the Board of Directors of this bank at its meeting held yesterday.”

Mr. Montgomery: And the letter does not mention anything about the bond issue—I mean the purchase.

Mr. Dockweiler: It does not refer in any way to the—we will call it “purchase” of the bond depreciation. [44]

Mr. Montgomery: Thank you.

Mr. Dockweiler: Except my attention is invited to the second paragraph which may have some relevancy and probably should be read just for the purpose of the record.

“In reply to your question regarding the notes given by shareholders for bond depreciation, will say that the note given by J. J. Dwyer for \$1,750 has been paid. The other notes are still held by this bank. We have not

(Testimony of S. James Tuffree.)

made any further collections from the remaining shareholders up to this date.”

Q. Do you know whether, subsequent to the date of November 20, 1931, any collections were made by your sub-committee?

A. No; I don't.

Q. They may or they may not have been made, I take it? A. Yes.

Q. Having been advised by the Comptroller's office of what their position was on repairing of impaired capital, did you ever do anything to attempt to advise the Comptroller's office that you had bought what you called the bond depreciation and you expected to get reimbursement of your contribution or payment, whatever you wish to call it, from appreciation in the bond account if appreciation ever occurred?

Mr. Montgomery: Well, I object to that as immaterial, irrelevant and incompetent, and also as already having been [45] answered. We have a letter here from the president stating what the basis of contribution was, or, rather, of the purchase.

Mr. Dockweiler: Your Honor, I have in mind that this gentleman was in a special fiduciary capacity; he was a director of a national bank. As a director he was not dealing at arm's length with the Comptroller but as a director of a national bank. He was under the same obligation that any other

(Testimony of S. James Tuffree.)

director or officer of the bank would be, having the destinies of the bank in its hands and being in relationship constantly with the bank examiner and with the Comptroller's office, to make clear disclosure to the Comptroller of matters which vitally affected the capital of the bank. And for this reason, may it please the court, where a loan is made of money to the bank with a string attached to it, or a condition of any sort, we all know that that is a liability of the bank which must ultimately be paid. It is only in the event that it is a voluntary contribution that it meets the requirements of the Comptroller's office that the capital be so much and unimpaired and maintained at that same unimpairment. If these are loans or advancements or obligations of the bank, you see, they do not meet the requirement that there be a source, an aggregate, a reservoir of money called "the capital" which is available to pay creditors doing business with the bank. And our position is that every director is in such a fiduciary capacity that he must [46] not permit the Comptroller's office, if the Comptroller asks a specific question, sets forth conditions and so on—must not permit him or lull him into a sense of security that the bank has been repaired as to impaired capital when, in point of fact, the Comptroller would consider that it had not been. And that is why I asked that question.

(Testimony of S. James Tuffree.)

Mr. Montgomery: The president has already advised the Comptroller on September 8th the following stockholders purchased the depreciation, with the understanding that the bonds were to be held or exchanged with a view of the same liquidating the amounts subscribed.

Mr. Dockweiler: Yes.

Mr. Montgomery: I do not think it is incumbent upon us to go any further. We have already told what our position was.

Mr. Dockweiler: And then you have that subsequent reply, stating clearly what the Comptroller's office would regard as only a sufficient and adequate—what they would call “contribution” to repair the impaired capital; and I am asking now whether—we get along into November—whether he ever did anything to make it clear that these gentlemen were not making a voluntary contribution without expectation of reimbursement.

Mr. Chipkin: May I add something there? This gentleman is a party plaintiff, and certainly he, himself, must have shown that he requested the money back or that he did not [47] approve that conduct of the directors in not calling attention of the Comptroller to the fact that he did not approve of that kind of an arrangement.

The Court: I will allow him to answer, with the exception noted to the ruling.

(Testimony of S. James Tuffree.)

The Witness: The question?

Mr. Dockweiler: Read the question.

(Question read by the reporter.)

A. Not in a personal way; no.

Q. Well——

A. Other than in letters that had been written by the officers of the bank to acquaint the Comptroller's office with our views with regard to that matter.

Q. Yes. Now, you had been a number of times, of course, advised by the Comptroller's representative, the bank examiner, that unless the capital of the bank were kept in good condition and unimpaired the bank would have to be closed?

A. That depends upon what examiner you are referring to there.

Q. I am referring to, we will say, Mr. Lamm, for one. Did he not tell you on a number of occasions that the capital always had to be unimpaired, else the Comptroller would appoint a receiver for the bank and liquidate it?

A. He told us at this specific time when the bond depreciation had occurred that the impairment of the capital [48] at that time would have to be taken care of, and told us how, in his opinion, how we could take care of it.

Q. Did he ever say that that was the opinion of the Comptroller of Currency of the United States?

A. Well, he was working for or out of the Comptroller's office, and we assumed that he knew

(Testimony of S. James Tuffree.)

what he was talking about; and it was at his suggestion that we took care of the depreciation in that way.

Q. Yes. Did you ever ask him whether that was the way that would be satisfactory to the Comptroller?

A. No; I did not.

Q. After these letters were received from the Comptroller which indicate that the Comptroller would regard as satisfactory only voluntary contributions made without expectation of reimbursement, did you ever go back to the examiner to find out whether—or to say “we did not make these voluntarily and without expectation of reimbursement. We expect reimbursement, and is that all right”?

[49]

A. No. I figured that we had paid our loan to the bank in good faith, just the same as any other person with capital from the outside would make in order to take care of an impairment.

Q. And these letters from the Comptroller never disturbed you in that belief?

A. They certainly did disturb all of us, as far as that was concerned, but we received these letters after the horse was out.

Q. Did you ever try to unravel that and put yourself back in status quo as you were prior to June, 1931?

A. Well, as I recall, after this had happened things started to happen in the banking world very fast. We had a holiday that averted a run on the



(Testimony of S. James Tuffree.)

bank down there, and I think I and one other director stayed down there for a whole day and we averted that run on the bank; and then after that the bank holiday was called, and I do not see how the directors or anyone else could have any control over a bank after it had been authorized closed.

Q. Now, Mr. Tuffree, isn't it a fact that this bank was not taken over by the Comptroller of the Currency for two and one-half years after this contribution was made—more than two and one-half years, as a fact? Wasn't it taken over in early 1934?

A. I think, as I recall, it was first put in the hands of a conservator. [50]

Q. Now, the conservator was Mr. Dolan himself, was it not?

A. Yes, sir. But as a conservator he was not responsible to us as directors.

Q. Do you recall the date when it was put in his hands as conservator?

A. No; I don't.

Q. You don't recall whether it was March, 1933?

A. No, sir.

Q. Do you recall this contribution, as I would phrase it, or advancement, whatever it is—the money paid under this arrangement for purchase of the bond depreciation that was paid by most of the gentlemen subscribing some time in the summer of 1931, was it not?

A. I imagine so. I——

Q. The Bank——

(Testimony of S. James Tuffree.)

A. This being a long time ago, I can't recall these dates definitely.

Q. These minutes we have been reading from all refer to that transaction as of in the summer and early autumn of 1931?      A. Yes.

Q. So, assuming that they reflect the time, then you would say the contributions or the payments were made in the summer of 1931, most of them?

A. I presume so. [51]

Q. Now, the bank ran all during the rest of the year 1931 without being closed down by the Comptroller, did it not?      A. I think so.

Q. And ran all during the year 1932 without being closed down by the Comptroller or Receiver, did it not?      A. I think so.

Q. It ran during the early part of 1933 up until March without being taken over by the Comptroller or the Receiver appointed?

A. Yes; and it was periodically examined by the department and we thought that we were going to come out all right. If we had not thought so, why, we certainly would not have wanted to make the loan to an institution that we thought we would never get our money back out of it.

Q. You were a stockholder in this bank, of course?      A. Yes, sir.

Q. And director of the bank?      A. Yes, sir.

Q. Did you hold any other office in the bank?

A. No, sir.

Q. You were interested in keeping the bank open, of course?      A. Yes, sir.

(Testimony of S. James Tuffree.)

Q. And these sums of money were raised for the purpose of keeping open the bank and not having the Comptroller [52] close it down or take it over or administer it through a Receiver, is that not the fact?

Mr. Montgomery: Now, may I have that question again?

(Question read by the reporter.)

A. That was the purpose, as I remember it.

Q. By Mr. Dockweiler: That was the purpose. And that purpose certainly was accomplished for pretty near two years, was it not?

A. I would say approximately.

Q. And, as a matter of fact, if you consider the operation of the bank under the conservator subsequent to the banking holiday in March, 1933, up until it was actually taken over by a Receiver in early 1934, the bank operated over two and one-half years after arrangement was made for sums of money to be in the aggregate \$115,000, roughly, placed in the till and from which the capital impairment was corrected?

Mr. Montgomery: We object to the computation of counsel as being incorrect. This purchase of the bond depreciation was made in June, 1931, and it went into the conservator's hands two years later.

Mr. Dockweiler: Yes, 1933; March, 1933.

Mr. Montgomery: March, '33, and then into the Receiver's hands in January, 1934.

Mr. Dockweiler: Yes.

(Testimony of S. James Tuffree.)

Q. Now, during all of that time between June of 1931 [53] and January of 1934 without being taken over by the Comptroller except for the appointment of a conservator after the bank holiday in 1933, excepting the time it was taken over by the conservator, and that was not until March of 1933? A. Approximately so; yes, sir.

Q. During all of that time you never sought to unravel what might have been a misunderstanding as to the terms under which such a contribution could be made? A. No; I did not.

Q. Did you ever examine any of the financial statements of the bank subsequent to June, 1931?

A. Yes; we looked them over.

Q. All right. Did you ever list as a liability of the bank this purchase of the bond depreciation? Was that ever reflected anywhere?

Mr. Montgomery: I object to that as not the best evidence. The books would show what the——

Mr. Dockweiler: Well, he was an officer of the bank. He was a director, your Honor.

The Court: He can answer in so far as he knows.

Mr. Dockweiler: Yes.

The Court: Of course, the records are the best evidence. If he has any actual knowledge he may state it. If he has not, it will have to be proven.

Mr. Dockweiler: Yes. [54]

A. No; I don't know that that was listed as a liability.

(Testimony of S. James Tuffree.)

Q. But the cash that had been raised through that June, 1931, arrangement was put to assets, was it not?

Mr. Montgomery: I did not catch the last there.

Mr. Dockweiler: The cash that was raised pursuant to the June, 1931, arrangement was placed among the assets. In other words, it repaired the impaired capital, did it not?

A. It repaired the bond depreciation; yes, sir.

Q. Yes; it repaired what you call the bond depreciation?           A. Yes, sir.

Q. And you gentlemen knew that the result of that was to put you on, we will say, an even keel, so as to show financially the bank was again in good condition and that its capital was not depreciated?

A. Put it in a good condition in this way: That as far as the bank—as the directors, themselves, that had made those contributions, and stockholders were concerned, it would satisfy that banking department; at least, that is what we thought that it would do because we were led to believe that that was the case by Mr. Lamm.

Q. Did you think the banking department was still satisfied when you were getting these letters as directors of the bank that any contributions must be voluntary and without expectation of reimbursement?

A. That was too late to help us out, as far as that [55] goes. We had made that loan in what I thought was good faith.

(Testimony of S. James Tuffree.)

Q. As a matter of fact, do you know whether there was ever any appreciation in the bond account? That was what you thought you were buying, was it not?

A. We have never been able to—I have never had, personally, a list of the bonds. That was all turned over to the conservator, and subsequent to the conservator to the Receiver. He has the bonds, I presume.

Mr. Dockweiler: Well, thank you. That is all the cross examination.

#### Redirect Examination

Q. By Mr. Montgomery: Was that your only purpose in paying this money into the bank, to keep the bank open?      A. You mean this—

Q. You paid in \$3,500, didn't you?

A. That is right.

Q. Was your only purpose in paying in the \$3,500 to keep the bank open?

A. To keep the bank open; yes, sir.

Q. And what did you expect to get out of it?

A. Oh, we expected to get—if the bank was permitted—we certainly would never get anything out of it if the bank was closed, and the only way it would be possible for us to obtain reimbursement would be by the appreciation of the [56] bonds; and we felt, as afterwards turned out, that the bonds would appreciate in value and by that appre-

(Testimony of William A. Dolan.)

iation in value, if the bank were permitted to stay open, we would get our money back.

Mr. Montgomery: That is all. Mr. William Dolan. [57]

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WILLIAM A. DOLAN,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. William A. Dolan.

Direct Examination

Q. By Mr. Montgomery: What is your business or occupation, Mr. Dolan?

A. I am a real estate salesman now.

Q. In 1931 what was your business or occupation?

A. In 1931, president of the Anaheim First National Bank.

Q. How long had you been president of it?

A. I was president from 1917 until 1927. I sold out and then I bought the bank back in 1929, until the bank was closed.

Q. And became president in 1929?

A. 1929.

Q. And were you the conservator that was appointed in 1933?

A. Yes. I was conservator from March 27, 1933, until the 15th of January, 1934.

(Testimony of William A. Dolan.)

Q. And at that time you turned over all the assets to the Receiver? [58]

A. To the Receiver; yes.

Q. Did you have anything to do with the negotiations which resulted in the purchase of this bond depreciation? A. I did.

Q. Did you pay some moneys in yourself?

A. Yes.

Q. How much did you pay?

A. I paid in \$32,500.

Q. Was that a cash payment? A. It was.

Q. And made at what time?

A. I don't remember the date. It was in——

Q. Was it at the time of the appointment of the committee or subsequent? The committee was appointed September 18, 1931.

A. It was appointed when?

Mr. Montgomery: June 18th. Did I say "September"?

The Reporter: Yes, sir; "September 18th."

Mr. Montgomery: Pardon me. June 18, 1931.

A. Yes; it was subsequent to that time, a short time after.

Q. I notice in Defendants' Exhibit B of September 8, 1931, "William A. Dolan—cash \$32,500.00." Are you the William Dolan referred to in that? A. Yes.

Q. And are you the one that wrote that letter?

[59]

A. Yes.



Testimony of William A. Dolan.)

Q. Now, will you state what the negotiations were that resulted in the furnishing of this money?

A. Well, prior to the time of raising this amount at the suggestion or recommendation of Lamm who was at that time the National Bank Examiner, we were informed that we could purchase the depreciation in our bond account which was impaired to a considerable amount at that time. Mr. Lamm had informed me and also the board of directors at that time that this had been done at another bank of which he had charge, and he felt very sure that we would be able to get our money back under that condition and plan which he outlined, and the money was put up by all the subscribers thereto with that understanding, and they all felt that if the bonds would appreciate above the price—above the market price at that time there would be no question about them getting their money back. Then later on, when the Comptroller advised us that we had to treat the amount put up as a voluntary contribution it was too late to do anything; the money had been paid in the bank, and we informed the Comptroller the condition under which the money had been put up.

Q. Did you talk to any other bank examiner before purchasing this depreciation, and explain the situation to him?

A. No; I did not—I think that later on, after the [60] money had been put up, Mr. Waldron was the successor of Mr. Lamm in our territory, and I

(Testimony of William A. Dolan.)

told him what we had done; and the records show that Mr. Waldron approved our action. That was the understanding of the way the information was given to the Comptroller's office.

Q. Do you recall the first meeting was June 18, 1931, at which you were present? I will show you that first, the minutes of that first meeting or that meeting. Let us look at the minutes themselves.

A. Yes.

Q. Now, was a committee appointed?

A. Yes.

Q. And had you discussed the matter with Examiner Waldron prior to that time? A. Yes.

Q. Do you recall about when it was you discussed the matter with Bank Examiner Waldron?

A. No.

Q. Was it before your meeting of June 18th or afterwards? A. It was afterwards.

Q. And do you know who was present when you discussed the matter with Mr. Waldron?

A. The board of directors were present, a quorum of them were present. I don't remember their names.

Q. Let me put it this way: Was your discussion with [61] Mr. Waldron, the Bank Examiner, prior to making actual collections?

A. Prior to the time that we collected the——

Q. That you collected the money that was to purchase this bond depreciation?

A. I think so.

(Testimony of William A. Dolan.)

Q. Now, what was said at the discussion with Mr. Waldron?

A. My recollection is that we discussed the plan as heretofore given, and that Mr. Waldron informed us that he thought it would work out all right, providing the bonds, the depreciation (appreciation) on the bonds increased. Of course, we all understood that that was where we were to get our money.

Q. You said the "depreciation of the bonds increased." Do you mean that it became of less or greater value?

A. I mean the depreciation decreased.

Mr. Montgomery: Does your Honor want to suspend now? It is 12 o'clock.

The Court: I think so. 2:00 o'clock, gentlemen.

(Whereupon an adjournment was taken until 2:00 o'clock p. m. of this day.) [62]

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Afternoon Session

2:00 o'Clock

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Mr. Montgomery: Mr. Dolan, will you take the stand? I would like leave, your Honor, when Mr. Lamm comes, if it is agreeable to counsel—he said he would be in at 2:30—if I may withdraw the witness and put him on.

The Court: Oh, yes.

(Testimony of William A. Dolan.)

WILLIAM A. DOLAN,

recalled.

Q. By Mr. Montgomery: Now, Mr. Dolan, I was asking you before luncheon as to having had some talk with the National Bank Examiner Waldron. During the noon hour have you refreshed your recollection as to the date that you had this conversation with Waldron? A. Yes; I have

Q. And when was that?

A. Why, we were examined July the 22nd, 1931

Q. Was that June or July?

A. Or June, I mean. June 22, 1931.

Q. That was before the July meeting—

A. Yes.

Q. —at which this \$175 a share was finally arranged? A. Yes. [63]

Mr. Montgomery: I have forgotten, your Honor whether I had him state the substance of that conversation or not. Do your Honor's notes show there?

The Court: He said: "He informed me he thought it would work out all right; after he told me I discussed it with Waldron after June, '31 Directors were present."

Q. By Mr. Montgomery: What did you tell Mr. Waldron the plan was?

A. I told him that Mr. Lamm had suggested that the directors and some of the stockholders purchase the bond depreciation and if the bonds ap

(Testimony of William A. Dolan.)

preciated, why, we were to be able to get our money back; and Mr. Waldron seemed to think that that was O.K. He said—

Q. Not what he seemed to think. What did he say?

A. He said he did not see why it would not work out all right; and he said to go ahead, and on the—I think it was June the 22nd, I wrote the Comptroller of the Currency to that effect.

Mr. Dockweiler: Just a minute. May I get the date of that, Mr. Reporter?

(Last part of answer read by the reporter.)

Q. By Mr. Montgomery: Well, are you referring to your letter attached to the minutes?

A. Yes.

Q. Attached to the minutes of the 18th day of June, 1931, is a letter from Mr. Gough, Deputy Comptroller, [64] dated June 19, 1931, and your answer is dated June 26, 1931. Is that the letter that you refer to?

A. Yes; that is the letter.

Mr. Montgomery: That refers to: "Will also state that we were examined by National Bank Examiner, Waldron on June 22nd, 1931, and he recommended and approved the above plan." Do you have a copy of this letter, counsel, or shall I read the rest of it in?

Mr. Dockweiler: What is the date of that letter?

Mr. Montgomery: June 26, 1931.

(Testimony of William A. Dolan.)

Mr. Dockweiler: June 26th. I have a copy of that and it will be stipulated, so far as the defendant is concerned, that may be used in lieu of reading into the evidence and otherwise presenting the exhibit.

Mr. Montgomery: We will offer that as the next number.

The Clerk: Plaintiff's Exhibit 3.

PLAINTIFF'S EXHIBIT No. 3.

June 26, 1931.

Mr. E. H. Gough,  
Deputy Comptroller,  
Washington, D. C.

Dear Sir:

Replying to your letter of June 19, 1931, regarding proposed increase in the bank's capital stock will say that we have decided not to increase the stock at this time. Under date of June 18, 1931, at a meeting of the directors of the bank, it was agreed that the directors and other stockholders would cover the depreciation in the bond account and raise the amount necessary for this purpose at once.

Will also state that we were examined by National Bank Examiner Waldron on June 22nd, 1931, and he recommended and approved the above plan.

We will notify you as soon as the amount necessary to cover the depreciation in the bond account has been raised.

(Testimony of William A. Dolan.)

Trusting that this is satisfactory and meets with your approval, we remain

Very truly yours,

President.

WAD:ML

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Q. By Mr. Montgomery: Who was M. Del Giorgio?

A. Mr. Del Giorgio was one of our stockholders and depositors.

Q. Did you have any conversation with him whereby you obtained his subscription?

A. Yes.

Q. Do you know who else was present?

A. I think Mr. Tuffree was present.

Q. Did you have a written form of subscription?

A. Yes. [65]

Mr. Montgomery: Have you the original of that, may I inquire of counsel, your Honor, or may we use this?

Mr. Dockweiler: I will stipulate that the wording on the original—we have the original here. I don't know whether you want to introduce the original or merely a copy. The original has the signatures.

Mr. Montgomery: Well, if it is stipulated—

Mr. Dockweiler: But they are similar.

Mr. Montgomery: If it is stipulated these are the actual signatures—

(Testimony of William A. Dolan.)

Q. Now, for instance, "M. Del Giorgio," is that Mr. Del Giorgio's signature?

A. Yes, sir; Mr. Del Girogio.

Q. Do you recognize the other signatures on the original here? A. I do.

Mr. Montgomery: Then let us introduce the copy.

Mr. Dockweiler: We will stipulate that the signatures are the signatures of the parties purporting to sign; and I would suggest that it might be more convenient if we were to introduce the copy into evidence.

Mr. Montgomery: Yes. That is what I am going to do now. I will introduce the copy of the original which has just been exhibited.

The Clerk: Exhibit 4.

Mr. Dockweiler: That would be Plaintiffs' 4? [66]

The Clerk: 4 is right.

#### PLAINTIFFS' EXHIBIT No. 4.

In compliance with action of the Board of Directors taken at a meeting held June 18, 1931, recommending that stockholders pay into a fund for the purchase of bond depreciation a sum equal to \$175.00 for each share owned, the undersigned hereby subscribe to such fund in the amount set opposite our names.

It is the intention that interest received from bonds equaling the amount of depreciation purchased be set aside for the use of the undersigned.



(Testimony of William A. Dolan.)

An appraisal of the bond list shall be made each six months and should a decrease in the depreciation be shown, the amount shall be divided pro-rata among the stockholders purchasing depreciation in bond account.

					11-22-32
					n
Wm. A. Dolan	Pd	\$32500-	D. A. Woodward	\$1225.00	
					10/28-32 n
F. H. Dolan	Pd	32500-	J. W. Truxaw	1750.00	
					n Pd
Ben Baxter	<u>6-4-3</u> Pd	8500	J. J. Dwyer	1750-	
		<u>RE-</u>			<u>115650-</u>
			Date of Note		
L. J. Kelly	Pd	4900-	10/10-32		
					n
Ernest F. Ganahl	Pd	1750.00	10-7-32		
					n
Frank Baum	Pd	5250-	9-19-32		
					n
J. W. Brunworth		5250-	10-6-32		
					n3m
S. James Tuffree	Pd	3500.	9/29-32		
					n
Ed Kelly		9000-	10-7-32		
Fred & Sophie					Pd
Rimpau	Pd	3675-			
F. A. Yungbluth		1750/00	11-23-32		

(Testimony of William A. Dolan.)

F. K. Day	Pd	<sup>n</sup> 875	10/8-32
		Pd 850 3000	
Minnie Baxter	Pd	<del>3850</del>	7-8-32
		<sup>n</sup> 875=	12-14-32
		Pd 2000-	
Jennie Pomeroy (M. B.)		<del>3500</del>	7-11-32
		1500	

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Q. By Mr. Montgomery: Yours is the first signature on that list, isn't it, \$32,500?

A. Yes, sir.

Q. Did you pay cash? A. Yes, sir.

Q. "F. H. Dolan," is that your brother?

A. Yes.

Q. He also paid cash? A. Yes.

Mr. Montgomery: Just a moment, your Honor. Cross-examine.

#### Cross Examination

Q. By Mr. Dockweiler: Mr. Dolan, you were the president of the bank, and the president of the bank during all of the matters that we have testified to, namely, since—or that have been referred to in the course of the examining of Mr. Tuffree, beginning with about 1930, is that right?

A. That is right.

Q. And you had previously been president of the bank before it was sold out, and then you re-

(Testimony of William A. Dolan.)

sumed being president of the bank after it was taken over by your interests again?

A. That is true.

Q. Now, you say that you were under the impression [67] that you and the other subscribers were buying what you call a depreciation of the bank account? A. Yes.

Q. Is that right? A. Yes.

Q. Do you recall that you had dealings with the Comptroller's office prior to June, 1931, with reference to making up impaired capital of the bank?

A. Yes.

Q. And those dealings or negotiations included, I take it, correspondence with the Comptroller's office? A. Yes.

Q. Now, I will ask you for the purposes of refreshing your recollection to note the minutes of the directors' meeting of July 16, 1930, about a year before this arrangement that you speak of, the June arrangement for purchasing the bond depreciation, and I will ask you whether or not you were present at that meeting if you have a recollection?

A. Yes. The records show I was there.

The Court: What is the date again?

Mr. Dockweiler: July 16, 1930.

Q. And, Mr. Dolan, at that meeting was there read—can you ascertain by refreshing your memory in respect to the minutes and in respect to what purports to be a letter from the Treasury Department and a copy of your reply, whether or not

(Testimony of William A. Dolan.)

there was a letter read to that meeting from [68] the Treasury Department, addressed to the board of directors of the Anaheim First National Bank, dated July 2, 1930?

A. Yes; the records show that.

Mr. Montgomery: Now, just—that is merely preliminary?

Q. By Mr. Dockweiler: And whether you expressed it——

Mr. Montgomery: I would like to have counsel state what the purpose of this examination is and what item we are going into, because this is long prior to the transaction in question.

Mr. Dockweiler: Well, showing, your Honor, that the gentleman knew long prior—a year prior, from the records themselves, that an impaired capital could only be corrected in one of several ways specifically set forth in this very letter that I am about to introduce.

Mr. Montgomery: This party is not a plaintiff.

Mr. Dockweiler: But he has testified on behalf of the contributors, or whatever you wish to call the gentlemen who signed this agreement, and he says that that was their understanding.

The Court: That letter is addressed to whom?

Mr. Dockweiler: "Board of Directors, Anaheim National Bank."

The Court: Objection overruled and exception noted.

(Testimony of William A. Dolan.)

Q. By Mr. Dockweiler: As I understand your testimony, Mr. Dolan, it was that such a letter had been read to the [69] board?

A. Nothing in there—yes; there is, too. Impairment of capital was caused by the depreciation in the bond account.

Q. Well, I want as a preliminary question to ask whether or not that letter was read to the board?

A. Oh, yes. The record shows that.

Q. And whether or not at the same meeting you, as president of the bank, were instructed to make a reply to the Comptroller's office, and in that connection I would invite your attention to the last paragraph of the minutes.

A. "Letter from the Treasury Department addressed to the Board of Directors of Anaheim First National Bank, dated July 2, 1930, was read and president instructed to reply to this letter, copy of which reply is being"—

Mr. Montgomery: I think, your Honor, in order that your Honor may get this with an understanding in mind, that counsel shall state what the whole transaction was there, because it was a different transaction than this particular one.

Mr. Dockweiler: Well, but it was the general question of repairing the impaired financial structure of the bank, your Honor. Whether there was—

The Court: You have stated the letter was of

(Testimony of William A. Dolan.)

information as to certain ways only in which it could be repaired.

Mr. Montgomery: No. They already had put up certain notes. There was a transaction already pending. [70]

Mr. Dockweiler: And we say, your Honor, it would show the state of mind of the witness.

The Court: Yes; let the witness explain it. He is well posted.

Mr. Dockweiler: Yes.

Q. And that is the copy of the letter in reply, Mr. Dolan—— A. Yes.

Q. ——that is attached to the minutes, dated July 17, 1930, addressed to E. H. Gough, Deputy Comptroller, and I assume was signed by yourself as president? A. Yes.

Q. I see there is no imprint of your signature?

A. No. That is just a copy of the letter.

Q. But that is the letter which you sent as president? A. Yes, sir.

Mr. Dockweiler: At this time defendant introduces as defendants' exhibit——

The Clerk: F.

Mr. Dockweiler: ——F, a copy of this same letter of July 2, 1930, addressed by E. H. Gough, Deputy Comptroller, to Board of Directors, Anaheim First National Bank; and I will ask opposing counsel whether it will be agreeable to introduce the copy.

(Testimony of William A. Dolan.)

Mr. Montgomery: It is agreeable to introduce the copy, and we will make the objection that it relates to an entirely [71] different transaction and has no bearing upon the issues of this case, immaterial and irrelevant.

The Court: The objection will be saved and exception noted, and we will see what we make out of it.

DEFENDANT'S EXHIBIT F

Copy

Tr-NKW-12

S-10228

(Seal)

Comptroller of the Currency Treasury Department  
Washington

Address reply to

July 2, 1930

"Comptroller of the Currency"

Board of Directors,  
Anaheim National Bank,  
Anaheim, California.

Dear Sirs:

Receipt is acknowledged of the President's letter of June 11, advising that a contribution of \$30,000 has been made by certain stockholders and that that amount, together with \$10,000 from undivided profits, has been set up as a reserve against the depreciation in your bond account which, according to a recent appraisal, is said to amount to \$39,076.

The report of an examination of the bank, com-

(Testimony of William A. Dolan.)

pleted on February 7 by National Bank Examiner R. Foster Lamm, showed depreciation of \$59,991.88. It would appear, therefore, that between the date of Mr. Lamm's examination and the date the President's letter was written there was an increase of approximately \$20,000 in the value of the securities owned by the bank. The depreciation shown in the examiner's report, when other losses of nominal amount were considered, showed an impairment of the bank's capital of \$39,523.54. If the market value of the securities has increased by \$20,000, the impairment of capital has as a result been reduced to approximately \$20,000 and the contribution of \$30,000 referred to in the President's letter of June 11 was sufficient if properly made to provide for the remaining impairment and in addition furnish undivided profits of approximately \$10,000.

From the resolution, a copy of which was incorporated in the President's letter, it does not appear that the contribution was made under such terms and conditions as to provide for the impairment. It appears on the contrary that those who supplied the funds for the "contribution" are to be reimbursed out of the earnings of the bank. If the understanding is that the "contributors" are to be reimbursed by the bank, there has merely been a substitution of sound assets for losses and a corresponding increase in liabilities so that the difference between the value of sound assets and the amount of



(Testimony of William A. Dolan.)

liabilities is not different from what it was before the funds were paid into the bank. It is then the position of this office that the impairment of capital, shown in the examiner's report, still exists with such changes as may be warranted by changes in the values of assets.

An impaired capital may be restored in the manner prescribed by Section 5205 involving an assessment of the stock. If restoration of the capital in the manner provided by that section is not desired, restoration may be accomplished through voluntary and unconditional contributions to the bank, or by the purchase for cash of the assets estimated by the examiner as losses. Contributions of cash or purchases of assets to eliminate an impairment of capital must, however, be unconditional and there must be no obligation on the part of the bank to repay the contribution or to repurchase the assets should they prove uncollectible.

If in your case the impairment is provided for by voluntary and unconditional contributions, or by purchase of the assets classified as losses, and the contributions are made or the assets purchased by only a part of the shareholders, it is not unreasonable that the latter expect reimbursement in proportion to their holdings from shareholders who have not contributed. Any arrangement involving future payments by stockholders who do not contribute, must, however, be made with the non-con-

(Testimony of William A. Dolan.)

tributing stockholders, themselves, and not with the bank.

You are advised, therefore, that unless advice is received shortly that the “contributions” referred to in the President’s letter of June 11 have been voluntarily made without any conditions whatever as to repayment by the bank, the losses shown in the examiner’s report will not be regarded as having been provided for.

A reply to this letter is requested at an early date, forwarding copies of your communication to Chief National Bank Examiner T. E. Harris, 1103 Alexander Building, San Francisco, California, and to National Bank Examiner R. Foster Lamm, 1124 North Olive Street, Santa Ana, California.

Yours very truly,

(Signed) E. H. GOUGH

Deputy Comptroller

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Mr. Dockweiler: Defendant introduces as Defendants’ Exhibit G the reply of Mr. W. A. Dolan, as president of the bank, to E. H. Gough, Deputy Comptroller, under date of July 17, 1930; and I will ask opposing counsel whether it will be stipulated that the copy may be introduced in evidence.

(Testimony of William A. Dolan.)

DEFENDANT'S EXHIBIT G

Copy

July 17, 1930

Mr. E. H. Gough, Deputy Comptroller,  
Treasury Dept.,  
Washington, D. C.

Dear Sir:

Your favor of July 2, 1930, addressed to the Board of Directors of the Anaheim National Bank, was received.

In reply to your letter will say that under date of July 16, 1930, the following agreement was signed by the stockholders of this bank who contributed the sum of \$30,000, which amount was placed in a reserve account for depreciation of bonds:

The undersigned stockholders of the Anaheim National Bank, having contributed the sum of \$30,000, which amount was placed in a reserve account with said bank for the purpose of covering a partial depreciation in the Bond Account of said Bank, have made said contribution with the understanding that we have purchased the depreciation in the Bond Account and do not hold the bank responsible for repayment of above amount.

We are mailing a copy of this letter to T. E. Harris, Chief National Bank Examiner, San Francisco, and also, a copy to National Bank Examiner, R. Foster Lamm, at Santa Ana, California.

(Testimony of William A. Dolan.)

Trusting that our action in this matter will now be satisfactory and meet with the approval of your office, I remain.

Yours respectfully,

President

WAD/DB

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Mr. Montgomery: Yes; on the same basis as the other letter. Now, Mr. Lamm is here. May we interrupt the proceedings and call Mr. Lamm?

The Court: Yes. [72]

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R. FOSTER LAMM,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. R. Foster Lamm, L-a-m-m.

Direct Examination

Q. By Mr. Montgomery: Mr. Lamm, in 1930 and 1931 what was your business or occupation?

A. Until September, 1931, I was a National Bank Examiner.

Q. And as such National Bank Examiner did you have anything to do with the First National Bank of Anaheim with respect to an impairment of their capital?

(Testimony of R. Foster Lamm.)

A. Not in 1930, I don't think.

Q. In 1931, then?

A. Not in 1931. It probably would be in 1928 or '29, as I recollect.

Mr. Montgomery: If I may have just a moment here, your Honor.

Q. May I show you, Mr. Lamm, the letter which has just been introduced in evidence of July 2, 1930, and ask you if you will refresh your recollection by reading that letter? And then there is an earlier one also, in April.

Mr. Dockweiler: Mr. Montgomery, may I ask from what minutes is he reading now? [73]

Mr. Montgomery: He is reading that last letter that you put in.

Mr. Dockweiler: 1930.

Mr. Montgomery: 1930.

A. My last examination of the bank must have been February the 7th, 1930.

Q. Were the dealings that you had then with the bank relating to this impairment of capital on or about that time? A. It must have been.

Q. Do you recall their putting up \$30,000 of notes?

A. I do not recall the exact amount; no.

Q. Well, do you recall, the transaction that is referred to in the letter there, or there being such a transaction?

A. Judge, I don't recall this transaction. I will tell you why if you want to know.

(Testimony of R. Foster Lamm.)

Q. Yes.

A. I left the district, you see, did not go back after my examination, if I remember correctly.

Q. I see. But you do recall——

A. I recall the original transaction; yes.

Q. Now, that is what I am getting at.

A. But not these particular notes.

Q. Some time in 1930, then?                   A. Yes, sir.

[74]

Q. You took up with the board of directors the matter of making up the deficiency?

A. At the time of the examination; yes, sir.

Q. Now, what did you tell them at that time as to a method by which they could handle the matter?

Q. By the Court: You mean the examination of February 7, 1930, which you said was your last one?

A. Yes, sir. As I recollect the whole thing, we held a board meeting, called a board meeting following the completion of the examination. What the figures were of the losses I don't remember. We discussed ways and means to restore the capital impairment. We discussed the possible effect of an assessment, and finally talked about a contribution. The question was raised at that time, if the directors contributed money to the bank would there be any chance of them getting it back again. We devised a scheme whereby if they contributed to the bank what they would do would be to actually buy the depreciation of the bond account. That would

(Testimony of R. Foster Lamm.)

give them a possibility of return of the money that they put in the surplus account or undivided profit account.

Q. By Mr. Montgomery: And when you spoke of "buying the depreciation" was that a phrase that you coined, or is that common?

A. Well, "buying the depreciation" was something new. You could always restore the capital of a bank by buying its bad assets. [75]

Q. Have you anything further you could add, or is that all you recall of the transaction?

A. I think that was agreed to and I left them to raise the money.

Mr. Montgomery: Cross-examine.

#### Cross Examination

Q. By Mr. Dockweiler: Mr. Lamm?

A. Yes, sir.

Q. How long had you been a bank examiner in the year 1930 at the time that you examined for the last time this Anaheim First National Bank?

A. I went in the service in 1921, I believe it was.

Q. 1921. And you say you attended a directors' meeting in early 1930 after your examination of February of 1930, at which the formula for repairing the impaired capital was discussed, is that right?

A. Yes, sir.

Q. Now, do I understand that the last examination that you made of this bank was in 1930?

A. Well, I think it was.

(Testimony of R. Foster Lamm.)

Q. Well, so far as you can recall, it was this February, 1930?           A. Yes.

Q. So your discussions with the gentlemen who are either officers or members of the board of directors of the [76] bank were discussions with reference to repairing the impaired capital as it stood following your examination in February of 1930?

A. That would be right.

Q. Yes, sir. You were not consulted, of course, with reference to any further repair of the impaired capital in June, 1931, were you?

A. No; I don't—no; I could not.

Q. As a matter of fact, had Mr. Waldron succeeded you as Examiner for that district?

A. Yes, sir.

Q. Probably some time in 1930?

A. It seems to me it was along in the fall of 1930 I left the district, maybe early summer.

Q. For the purpose of refreshing your recollection, I will show you what has been introduced into evidence here merely by copy, but for the purpose of refreshing your recollection probably you could do better with the original. This is the original of what has been introduced into evidence as Plaintiffs' Exhibit No. 4. And I will ask you whether or not that document was ever exhibited to you or your advice asked upon it? And, for the purposes of your testimony, I will state what I understand to be the substance of the evidence, namely, that that is the arrangement which, in June, 1931, was en-



(Testimony of R. Foster Lamm.)

tered into between these various contributors for raising about \$115,000 to [77] repair the impaired capital.

A. Mr. Dockweiler, I don't think I was there in June, 1930.

Q. But this particular Exhibit No. 4 was never referred to you for your advice or consultation afterwards? A. Not to my recollection.

Q. Not to your recollection. So your transactions with the bank, so far as Examiner was concerned, were terminated some time in 1930, and the best that you can figure at this time is in the spring of 1930?

A. Let me see; June, 1930. I think I left the district along in the middle of 1930.

Q. Yes. By the way, I show you for the purpose of fixing a time in your mind when you discontinued your examination of this bank in the capacity of Examiner for the district—I show you the original copy which has been introduced as Defendant's Exhibit F, being a letter dated July 2, 1930, from the Deputy Comptroller to the Board of Directors of the bank. Was that ever discussed with you by Mr. Dolan as president, or any other officer or director of the bank?

A. Mr. Dockweiler, I could not remember whether it was or not. It might have been possible I received copies of this letter, and it might have been Mr. Dolan came over there to Santa Ana or I went over to Fullerton or Anaheim and talked it over. [78]

(Testimony of R. Foster Lamm.)

Q. Do you think your mind would be refreshed if you would read, say, the fourth paragraph of that letter and the fifth paragraph?

A. No. That brings back no recollection. Those are more or less stereotyped paragraphs.

Q. Stereotyped. In other words, they represent the policy—

A. Of the department.

Q. —of the Comptroller's office; and would you, if you wanted to state the policy of the Comptroller's office, find it reflected in the words in paragraph 4 of this July 2, 1930, letter?

Mr. Montgomery: I object to that as calling for a conclusion of the witness.

The Court: Objection sustained to that.

Q. By Mr. Dockweiler: But that paragraph, as you say, does represent the policy, a stereotyped expression?

A. Yes, sir.

Mr. Montgomery: We make the same objection. It is the same question.

Mr. Dockweiler: It is rather to minimize the examination of the gentleman, because I want to go into the point of the ways of repairing impaired capital. And if he states that that is a stereotyped expression of what would be sent to banks—

The Court: If he could state that that was the [79] general instruction or advice with which he was familiar, he may state it.

Mr. Dockweiler: Yes; using the Judge's words as my question?

A. Yes, sir.

Q. Now, you say that it was one of the cus-

(Testimony of R. Foster Lamm.)

tomary methods of repairing impaired capital for anyone interested in the bank, like stockholders or directors or officers, buying bad assets?

A. That is correct.

Q. Yes. Now, in your experience as a bank examiner, commencing with 1921 and ending in 1930, I take it, at least with reference to this bank——

A. '31, I think.

Q. —'31, did it ever come to your attention that the capital, the impaired capital of a national bank was ever repaired by any such method as the method contemplated by this arrangement, namely, buying the depreciated bond account? A. Yes.

Q. In what banks?

A. First National Bank of Huntington Beach.

Q. Was that within your jurisdiction?

A. Yes, sir.

Q. Who suggested that to that national bank?

A. I think I did. [80]

Q. You did. Now, isn't it a fact, Mr. Lamm, that this is your own idea, and whatever merit or demerit attaches to it as a formula for repairing the impaired capital of a bank is your own?

A. I think maybe I claim it.

Q. You would claim it. Do you know whether or not as a matter of policy of the Treasury Department that was one of the recognized methods?

Mr. Montgomery: I object to that as calling for a conclusion of the witness.

(Testimony of R. Foster Lamm.)

The Court: No. He can state whether he has ever had the approval of the department in his written reports as to any such plan.

Q. By Mr. Dockweiler: Yes. Using the Judge's words in my question, what would your answer be?

A. Well, I would have to say that they did not disapprove it when it worked.

Q. They did not disapprove it. Did you ever specifically set it before them and ask for their approval or disapproval?

A. Only as an accomplished fact.

Q. Only as an accomplished fact, and that with reference to what?

A. First National Bank of Huntington Beach.

Q. Yes. And when was that submitted to the department? [81]

A. Oh——

Q. In what year?

A. Probably 1929, I imagine.

Q. 1929. Did you ever have an answer from the Comptroller's office as to that being a proper method of repairing impaired capital?

A. I never.

Q. No answer one way or the other?

A. I do not remember that there was.

Q. How would you carry such an item in the books of the bank?

Mr. Montgomery: I object to that as not proper cross examination.

Mr. Dockweiler: If it is a question of a method, your Honor, and as to the soundness of the method, and this gentleman was a bank examiner——

(Testimony of R. Foster Lamm.)

The Court: Q. In the instance that you have given was it entered on the records of the bank?

A. Yes, sir; it had to be.

Q. By Mr. Dockweiler: How was it entered?

A. The bond was charged down and the undivided profits to the new carrying value.

Q. To its carrying value?

A. Yes, sir. That would deplete the undivided profits account first, and then your surplus, and then into the capital. Before it gets into the capital the [82] contribution goes into the undivided profit account and restores the undivided profit account. In other words, they buy the charged-off assets.

Q. But the bonds are, of course——

A. (Interrupting): Makes the recovery out of the return of the charged-off assets.

Q. But the bonds are upon the books of the bank, bonds of the bank, are they not, assets of the bank? A. Yes; at a carrying figure.

Q. At a carrying figure. How about the interest on those bonds?

A. And that is generally turned into a matter of dispute.

Q. That turns into a matter of dispute. Under your theory who would be entitled to the interest on \$100,000 worth of such bonds that were upon the books of the bank and upon the statements issued to the public, as bonds?

A. Well, it could be prorated, you know. That would be easy. That is a matter of mathematics. I don't recollect we ever got into it that far.

(Testimony of R. Foster Lamm.)

Q. Suppose there appeared on the books of the bank \$115,000 worth of bonds; how would you express in the bank statements that those bonds bore no interest that was payable to the bank; that the interest had been cut off and any interest and appreciation would go to third parties?

A. It would not be expressed that way. The bank [83] would be carrying the bonds at its book figure. They might be worth more and they might be worth less.

Q. In reference to this Anaheim First National Bank, did you ever during the course of your examination period suggest that method and have the gentlemen during the course of your examination period carry it out in any bond depreciation repairment that they made, that is, with reference to this particular bank?

The Witness: May I hear that question again?

Q. May I reframe my question? That looks a little complicated. At any time during your examination period of this bank was there ever this method put into practice?

A. You mean were the entries actually made?

Q. Well, was this repairing of impaired capital by buying bond depreciation of Anaheim First National Bank ever put in practice on any occasion during the period of your examining the bank?

A. Mr. Dockweiler, I do not remember because I passed on out of that picture. It was not done immediately after my examination. I have a faint

(Testimony of R. Foster Lamm.)

recollection, and I am not sure of this, of the bank getting an official notice of impairment of capital, but I am not sure about that.

Q. And, as I understand, this method is your own method and your experience in it is limited to the one bank, the First National of Newport?

A. Yes, sir. [84]

The Court: I thought you said the Huntington Beach. Did you say "the Huntington Beach"?

A. Yes, sir.

Mr. Dockweiler: That is all. No further cross examination.

Q. By the Court: Was that bank liquidated or restored?

A. That bank later merged into a state bank, if I remember correctly. At the time, this capital was restored and it operated along.

#### Redirect Examination

Q. By Mr. Montgomery: In order to perhaps fix a little more definitely, let me show you a letter from the Treasury Department of April 23, 1930, to Mr. William A. Dolan, president, Anaheim First National Bank, and see if that letter would refresh your recollection as to dates.

(Witness examining paper.)

Q. Now, the question is: Would it be after that letter that you gave the advice to them about restoring the impaired capital by buying the depreciation?

(Testimony of R. Foster Lamm.)

A. Judge Montgomery, I have a recollection—it may be faulty—of holding a board meeting immediately after the examination; and the date of this examination, according to the first letter, was February the 7th.

Q. Yes. And this gives the same date, I believe.

[85]

A. Well, then, it would be before that letter, you see, that I held the meeting.

Q. You say this letter speaks of your examination completed on February 7th?

A. Yes, sir. It was always customary to hold your meeting immediately after you completed your examination.

Mr. Montgomery: May I just have a moment to see if there is something in the minutes here? I might say that I examined the minutes and I do not find any note of Mr. Lamm being present at a stockholders' meeting; but I do find mention of increasing the capital stock. That was the first plan, apparently. That is all.

Mr. Dockweiler: That was the first plan.

Mr. Montgomery: That was the first plan. That is all, Mr. Lamm.

Mr. Dockweiler: That is all.

Mr. Montgomery: It is agreeable that Mr. Lamm be excused?

Mr. Dockweiler: It is agreeable to us. [86]



WILLIAM A. DOLAN,

recalled.

Cross Examination resumed.

Mr. Dockweiler: Will the reporter be good enough to read the last two or three questions and answers of Mr. Dolan's cross examination, just so I can pick up the thread?

(Record read by the reported as requested.)

Mr. Dockweiler: Because we consider them important, your Honor, I would like to read those letters to your Honor for the orderly procedure; and if it is agreeable to opposing counsel, the reporter need not take them down because they are already introduced.

(Mr. Dockweiler thereupon read Defendants' Exhibits F and G.)

Mr. Montgomery: I think, your Honor, that you should have before you the resolution that is referred to in that letter, and with counsel's consent I will read it, from the meeting of the 29th day of May, 1930.

"It was moved by J. J. Dwyer, and seconded by Fred C. Rimpau and carried, that a reserve fund be created by voluntary contribution of stockholders to offset depreciation in bond account, and that stockholders contributing will be reimbursed from said reserve fund which shall be built up by appreciation in the bond account or by any other earnings in the bank."

(Testimony of William A. Dolan.)

Mr. Dockweiler: That was prior to the sending of that letter, was it not?

Mr. Montgomery: Yes; that was prior, and it is referred to in the letter as being the basis of the contributions, so-called.

Mr. Dockweiler: Let me see; what is the date of that meeting?

Mr. Purpus: May 29, 1930.

Mr. Dockweiler: That was in 1930, a year before the arrangement of June, 1931.

Q. Now, this letter of the Comptroller's office, I take it, remained in the files of the bank and was incorporated into the minutes of the meetings of the board, that is, into the minute book itself, as we find it here in court?      A. As far as I know.

Q. Are you able to tell by looking at the original of this June, 1931, arrangement which has been introduced by copy as Plaintiffs' Exhibit No. 4, when the various contributions were paid?

A. No way to tell by this.

Q. I will ask you whether or not these facts which appear after certain names, like "10-16-32, 10-7-32," and there must be 10 or 12 of them—whether that refreshes your recollection as to when the contributions were made or payments made under that arrangement?

Mr. Montgomery: Well, the pleadings, I think admit [88] the contribution. Oh, you are getting dates?

Mr. Dockweiler: Just the time, that is all.

(Testimony of William A. Dolan.)

Mr. Montgomery: Getting the dates; I get you.

A. That is when the notes were paid from these different contributions.

Q. By Mr. Dockweiler: In other words, cash was given by some contributors? A. Yes.

Q. And notes by a number of others, and you say the notes were paid in 1932, part of them would you say from that original?

A. I think so; yes.

Q. Then that would be, if I follow it—

Mr. Montgomery: Pardon me. May I make the objection that I don't think this witness knows.

Mr. Dockweiler: Well, if he does know I just want to ascertain.

A. I am not certain about those notations.

Q. You are not certain? A. No.

Q. Could you tell in whose handwriting they are? A. It looks like my handwriting.

Q. It looks like your handwriting. Well, that recalls nothing, however, to you. Isn't it a fact that there were a number who paid or made their contributions by notes and the Comptroller's office objected to the note [89] feature and insisted that the notes be paid?

A. I don't remember that. The Comptroller asked, I think—wanted to know how many notes that had been paid since the arrangement had been made and wanted a list of those that were not paid.

Mr. Montgomery: Your Honor, we are agreed to introduce the original and withdraw the copy.

(Testimony of William A. Dolan.)

The Clerk: Of Exhibit 4?

Mr. Montgomery: Of Exhibit 4. No; not 4, is it?

The Clerk: Yes; Plaintiffs' 4.

Mr. Montgomery: Oh, yes; this is Plaintiffs' 4.

Q. By Mr. Dockweiler: Mr. Dolan, you knew during all of this time that you had actually an impaired capital and that the Comptroller by repeated letters stated that contributions must be voluntary and without expectation of reimbursement, did you not?

A. That was mentioned after we purchased the bond depreciation.

Q. Now, in 1930, which was a year before you purchased the bond depreciation and which was the last time prior to June of 1931 when you had trouble with the bank—and I am referring to the trouble of 1930.

A. What trouble are you referring to?

Q. In 1930 you had to make good some impaired capital. A. Bond depreciation was all.

Q. And then you had this letter of July 2, 1930, from [90] the Comptroller's office stating just how voluntarily and without expectation of reimbursement the contributions had to be.

A. What is the question, please?

Q. Well, the question is: Didn't you during 1930 and during 1931 know that the Comptroller required that all contributions to repair impaired

(Testimony of William A. Dolan.)

capital had to be voluntary and without expectation of reimbursement?

Mr. Montgomery: I object to that as calling for a conclusion of the witness and as argumentative. We have the letters here. They speak for themselves.

The Court: Objection sustained.

Q. By Mr. Dockweiler: Now, this was a relatively small bank, I take it, a bank in Anaheim that had how many officers and clerks and operatives—probably 15? A. Something like that.

Q. 15. And no branches, of course?

A. No.

Q. And you were in direct charge in 1930, in 1931 and 1932 and up into 1933 until the Receiver took it over in 1934, in charge of that bank yourself? A. Yes.

Q. And the files were accessible to you at all times? A. Yes.

Q. And you would say that you were familiar with the files of the bank, would you not? [91]

A. Yes.

Q. Now, do I understand that Mr. Waldron approved this method of buying the bond depreciation? A. Yes.

Q. Did he attend a directors' meeting in that connection? A. Yes.

Q. Do you remember when the meeting was held?

(Testimony of William A. Dolan.)

A. Right after his examination. I don't remember the date.

Q. Had you previous to the meeting discussed this method with him?

A. We discussed it with him at the meeting.

Q. At the meeting? A. Yes.

Q. Do you remember what words were said to him and what words he said with reference to that matter?

A. It would be impossible to remember all that was said.

Q. Well, the substance of them, Mr. Dolan?

A. The best of my recollection is that the matter was discussed regarding the depreciation in the bond account, for this reason: We had over \$400,000 worth of bonds. One point up or down represented \$4,000. In a week's time those bonds would depreciate or appreciate 5, 10, 15, 20 to 30 thousand dollars. It all depended [92] on the time we were examined. If we were examined on a certain day those bonds would be up \$30,000; if we happened to be examined another day at another time we would be worth \$20,000 less. It was all an estimated depreciation. Of course, Mr. Waldron felt as we did at that time, that we had hit the bottom and when we put up this amount our troubles would be over. The depreciation, or the amount that was put up was more than the amount that they figured the impairment of the capital. The Comptroller at the time, or the Bank Examiner figured something like

(Testimony of William A. Dolan.)

\$90,000 impairment. We put up \$115,000. So that is the way it was just on that bond business, up and down.

Q. Now, that difference between \$90,000 and \$115,000, didn't that have something to do with retiring some notes that were not considered very good?

A. No. That was all bond depreciation.

Q. In substance, then, what was said to Mr. Waldron and in what way did you approach the question of asking for his approval or his expression of doubt?

A. Why, the record will show there. I wrote to the Comptroller that he had approved the matter. I could refresh my memory on that point.

Q. You are referring to a letter sent in what month?      A. July 22nd, I think it was, 1931.

Mr. Purpus: June.

A. June. [93]

Mr. Dockweiler: June, 1931.

Q. And you recall that later you received a reply from the Comptroller's office to this June letter dated the 24th?

A. I think I answered that this morning, didn't I?

Q. Well, I will show you a letter dated August 20th, addressed by Deputy Comptroller to the Board of Directors.

A. August 20th what year?

Q. August 20, 1931.

(Testimony of William A. Dolan.)

And may I, your Honor, at this time, as I want to put a question to Mr. Dolan, read that letter so as to give your Honor the background, without the necessity of the reporter taking down the words because the letter has already been introduced in evidence?

The Court: Very well.

(Whereupon Mr. Dockweiler read Defendants' Exhibit A.)

Q. Now, you never wrote to the Comptroller that your understanding was otherwise than that these were to be voluntary contributions without expectation of reimbursement, did you?

Mr. Montgomery: I object to that question as calling for a conclusion of the witness.

Q. By Mr. Dockweiler: Well, I will ask whether he ever sent a letter to the Comptroller stating to the Comptroller, in substance and effect, that, "No, Mr. Comptroller, you are mistaken; we expect reimbursement and [94] these are not contributions"?

Mr. Montgomery: I object to that as not the best evidence. We have the letters in evidence. There is no use of arguing it.

Mr. Dockweiler: I don't know whether we have all the evidence. He could state as a fact whether he did ever send such a letter.

Mr. Montgomery: You may ask him if there were any other letters, then.



(Testimony of William A. Dolan.)

Q. By Mr. Dockweiler: Were there any other letters, Mr. Dolan, than the letters we have adduced so far, touching your informing the Comptroller's office of what the plan was and what your understanding was and the understanding of the board as to contributors?

Mr. Montgomery: And I object to that, without showing that all the parties who are plaintiff here had knowledge of the situation and knowledge of these letters, and were put to an election or otherwise that they should notify the Comptroller.

Mr. Dockweiler: But, your Honor, this gentleman was president of the bank and as such obviously in respect to these matters——

Q. By the Court: You have seen the various letters that they have here. Were there any other letters that you wrote to the Comptroller's office that you now recall?

A. Your Honor, it says in this letter: "You are [95] requested to attach to your reply a copy of your daily statement," etc. But they don't have the reply to this letter here, so I must have written a reply. To the best of my recollection, I always replied to those letters.

Mr. Montgomery: Exhibit B is a reply.

The Witness: He just read this one letter. He didn't read the reply.

Mr. Dockweiler: All right. Then, September 8th, Exhibit B.

Mr. Chipkin: Here it is.

(Testimony of William A. Dolan.)

Q. By Mr. Dockweiler: I show you Exhibit B and ask whether you sent any other reply than this one that is marked Exhibit B and dated September 8th, and refers specifically to this August 20th letter.

A. This was his reply to this, then. August 20, 1931, so that is a reply to this letter.

Q. Yes. So, then, that is dated—that copy of yours to the Comptroller is dated September 8th, isn't it?      A. Yes.

Q. Then you received in reply to that from the Comptroller—

(Counsel looking for exhibits.)

Q. After your September 8th letter to the Comptroller you received, I take it, a reply; and I am asking whether or not this letter of October 30th to the board from the Comptroller and admitted into evidence as Exhibit D is not [96] the reply of the Comptroller to that, inviting your attention to the first line in which he refers to your letter?      A. Correct.

Q. And in which he says: "Referring to the president's letter of September 8th, and particularly that portion regarding the depreciation of your bond account," describing the amounts and so on, then added: "It should be clearly understood by all parties concerned that these contributions are voluntary and unconditionally made, with no expectation of reimbursement from the profits or earnings of the bank." Did you ever, so far as you

(Testimony of William A. Dolan.)

know, make any other reply to that letter, Mr. Dolan, than what we now have in the records?

A. That is the only letter.

Q. And you never sent any reply to the Comptroller, saying that he was under a misapprehension if he thought that they were voluntary and not made with expectation of reimbursement?

A. I stated the facts, that we put up the money, the understanding we had. That was all I could do.

Q. Did you know as a bank president that if that impairment had not been met in a satisfactory way that the Comptroller could have put a receiver in charge and liquidated the bank?

A. That is not mentioned in that section in the letter.

Q. What did you say?

A. Nothing of that kind has been mentioned in any of [97] those letters.

Q. Nothing of the kind has been mentioned in any of the letters, you say. But you knew from your previous advice from the Bank Examiner that it had to be cured and had to be cured satisfactorily, else the Comptroller would close down the bank?

A. No. A lot of banks had quite a lot of depreciation in their bond accounts along those times and they were trying to get along without having any trouble, and a lot of them did get by.

Q. You think that the Comptroller would have let this bank go if he had known the true circumstances of the arrangement of June, 1931?

(Testimony of William A. Dolan.)

A. He let it go until 1934.

Q. He did?           A. Yes, sir.

Q. But was he ever informed by you that what he stated in this——

A. The only information he has is those letters. Every letter I wrote to him I stated that the money was put up to purchase the bond depreciation. Why didn't he close it? He was satisfied.

Q. But you made no reply to that letter wherein he states it must be——

Mr. Montgomery: I object to that question as having been asked and answered. [98]

Mr. Dockweiler: If he will just say that he did not make any reply to that or explain to him.

A. I could not tell without looking at the files.

Q. So far as your recollection goes?

Mr. Montgomery: That is immaterial.

The Court: He can examine his files if you wish him to.

The Witness: The Receiver has all the files, Judge.

The Court: I see.

Q. By Mr. Dockweiler: And these contributions in June of 1931 were made in order to keep the bank open, were they not, when the Examiner was pressing you to cure that depreciation?

A. No; nothing said about closing the bank at all; to cure the depreciation in the bond account.

Q. It is a fact, too, isn't it, just for the purposes of the record and to clarify that point, that all of

(Testimony of William A. Dolan.)

These payments were not actually completed in June, but some of them were represented by notes, and then 18 other people had to be interviewed after June 17th, and, as a matter of fact, payments on account of that bond depreciation arrangement of June, 1931, were made in 1932?

A. No; that is not correct.

Q. None of them were made in 1932?

A. The payments had nothing to do with that putting up the money for the bond depreciation. A lot of those [99] notes were sold to the Federal Reserve Bank and we received the cash for them.

Q. Yes. Do you remember when the notes were sold, what part of the year?

A. No. The notes were all put in at the same time the cash was entered up. When the cash was entered on the books the notes were entered. The notes might not have been paid for six months, a year, or maybe two years after. They were carried just the same as your note or anybody else's note.

Q. When you reported it to the Comptroller of the Currency only a few of you gentlemen had on July 17th actually subscribed; the biggest subscriptions——

Mr. Montgomery: Pardon me?

Q. By Mr. Dockweiler: Wasn't it a fact that 18 of these people had still to be contacted?

A. No. That is a misunderstanding. We did not intend to contact any more people. The money

(Testimony of William A. Dolan.)

had been put up. He is referring to the rest of the stockholders.

Mr. Dockweiler: That is all.

A. Who were not contacted. We did not intend to contact them. We contacted all the stockholders we intended to contact.

Mr. Dockweiler: That is all. [100]

#### Redirect Examination

Q. By Mr. Montgomery: When did you and your brother put up your cash, on what date?

A. What date?

Q. Yes.

A. Very shortly after we had that meeting. I don't remember the exact date.

Q. Would it be July, 1931?

A. Yes; July, 1931.

Q. And the other contributions which were cash were put up at that same time? A. Yes.

Q. This \$30,000 in notes that was put up, that whole transaction was canceled, wasn't it?

A. Yes.

Q. And the notes were taken up out of the proceeds of this second— A. Purchase.

Q. Purchase? A. Yes.

Q. And was any money put up on the \$30,000 deal? Did Mr. Kelly put up some which was repaid to him?

A. No; that was just notes, all notes.

Q. All notes? A. Yes.

Q. And they were cancelled? [101]

(Testimony of William A. Dolan.)

A. Yes.

Mr. Montgomery: That is all. Does your Honor want to take the afternoon recess?

The Court: About 10 minutes, gentlemen.

(Short recess.)

Mr. Dockweiler: I think, Mr. Montgomery, you said something this noon, as I recall, or one of your colleagues, as to whether or not we would be prepared to stipulate as to much of what these witnesses would testify. And I don't know, if you feel that you have a factual background, it may be that we could minimize considerable of the court's time. I think already the court has a fair idea of the problem.

The Court: Yes.

Mr. Montgomery: I think this witness will be very short, so I will ask her. [102]

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MINNIE PALMER,

a plaintiff herein, called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Mrs. Minnie Palmer.

Direct Examination

Q. By Mr. Montgomery: And your name was formerly Minnie Baxter?      A. Correct.

(Testimony of Minnie Palmer.)

Q. I show you Plaintiffs' Exhibit No. 4, and call your attention to the name "Minnie Baxter" there.

A. Yes.

Q. I see a pencil annotation "Pd \$850." Was that cash? A. It was.

Q. Contributed at the time?

A. Yes. And Mother paid \$2,000.

Q. And your mother is Jennie Pomeroy?

A. Correct.

Q. And she paid \$2,000 cash. And then the balance of your account, \$3,000, was—

A. A note.

Q. —a note which was paid later?

A. Yes. [103]

Q. So that you have contributed in full the amount of \$3,850, and your mother \$1,500 more, making her total contribution \$2,500?

A. Correct.

Q. I will ask you the circumstances of signing this Exhibit 4.

A. Well, I was called in by Mr. Dolan and in the presence of he and Mr. Tuffree this was given to me and—Well, it states for itself what it is, and I signed it.

Q. Is this the only paper that you signed or the only arrangement or agreement which you had?

A. Yes.

pendence with the Comptroller of the Currency?



(Testimony of Minnie Palmer.)

A. I did not.

Mr. Montgomery: Cross-examine.

Mr. Dockweiler: May I ask opposing counsel whether my file is in their possession?

Mr. Montgomery: What is that?

Mr. Dockweiler: My file containing the complaint?

Mr. Montgomery: No. I might ask one more question.

Q. You never were paid back any of this money?

A. None.

Q. Nor your mother?           A. No. [104]

Cross Examination

Q. By Mr. Dockweiler: You are Mrs. Palmer, formerly Minnie Baxter?           A. Correct.

Q. And you signed this document that has been introduced as Exhibit 4 under the name of "Minnie Baxter" for \$3,850?           A. Correct.

Q. And did I understand your testimony to be that you were not a director?           A. I was not.

Q. And is another one of the signers a relative of yours?           A. Just my mother.

Q. Who was that?

A. Mrs. Jennie Pomeroy.

Q. Mrs. Jennie Pomeroy?           A. Yes.

Q. And she signed for \$3,500. Now, both of you paid your full cash?           A. Yes, sir.

Q. Who obtained your signature and your mother's, if you know?

(Testimony of Minnie Palmer.)

A. Mr. Tuffree and Mr. William Dolan.

Q. That was Mr. Tuffree who testified this morning? A. Yes. [105]

Q. And Mr. William Dolan who has just concluded his testimony? A. Yes, sir.

Q. When did they first present the document to you?

A. Well, I would say along about the first of July.

Q. Yes; about the first of July. And which one of the two? A. They were both there.

Q. Both there. And what did they say?

A. Well, they gave me this and I was supposed to get it back. Of course, I wouldn't put \$8,000 in without getting it back.

Q. They said what, as nearly as you can recollect?

A. I can't remember the conversation.

Q. The substance?

A. All I can say that they expressed it as it stands there, as near as I can tell you. I can't tell you exactly what they said. They were buying the depreciation of the bonds with the expectation of getting it back.

Q. Did they ever tell you what would happen if this was not signed up?

A. Well, of course, we all considered we were helping ourselves as well as the bank. We were

(Testimony of Minnie Palmer.)

stockholders and we were helping ourselves as well as the bank.

Q. And you knew the bank's financial condition?

A. I did not. I did not. I supposed it was

A-1. [106]

Q. A-1. They did not discuss with you that there was any impairment of the——

A. They did not.

Q. ——financial condition?

A. No; they did not.

Q. Didn't you ask any questions as to why you should have to advance money to the bank?

A. No; I can't say that I did.

Q. You do know now that the bank's capital was impaired at that time?

A. I found it out now; yes.

Q. When did you first find it out after signing that document?

A. Well, I don't think I really felt very nervous about it until after the Receiver came in. When it was in the hands of the conservator I can't say I really felt very much about it.

Q. Down through 1931 and through 1932?

A. I think it was through 1931 and through 1932. I won't be sure about the date.

Q. I think the record shows that it was in March of 1933, just after the bank holiday. But in any event, it would not be until that time that you had any idea that the bank's capital was impaired?

(Testimony of Minnie Palmer.)

A. None whatever.

Q. Did you ever have any other discussions with either [107] of these gentlemen or with any other officer or director of the bank subsequent to July 1st, namely, subsequent to this first conference at which you signed the——

A. No; I did not.

Q. When did you pay your money?

A. I made the first payment, I think just at the time the note was drawn up, and the other was probably made in—well, I made my final payments in 1934.

Q. In 1934 on this. How much do you think you paid during the summer and autumn of 1931?

A. I don't think I paid only the original \$850.

Q. Only \$850? A. That is all.

Q. And then when did you pay after the \$850? For instance, that was paid at what time?

A. \$850 at the time the note was drawn up.

Q. When was that?

A. That was in July.

Q. In July you actually paid \$850?

A. I did.

Q. And then a note was given for the balance?

A. Yes.

Q. When did you begin to pay off on the note?

A. I believe it was after Mr. Hogan came in.

Q. After Mr. Hogan came in. The same for your mother? A. Yes. [108]

(Testimony of Minnie Palmer.)

Q. Each in identical situations, so far as that is concerned? A. Yes.

Q. With an eight hundred and some odd payment in July and note for the balance, on which payments were not made until the Receiver came in?

A. I think that is correct.

Q. And this document, this June, 1931, signed arrangement was never discussed?

A. No; it was not.

Q. After the one time? A. No; it was not.

Q. That is, with officers of the bank or directors? A. No.

Mr. Dockweiler: I think that is all.

Mr. Montgomery: Just a minute.

### Redirect Examination

Q. By Mr. Montgomery: Who did you make these payments on your note to?

A. The final payments?

Q. Yes.

A. To Mr. Hogan after he became conservator or Receiver.

Q. Did you pay the Reserve Bank at any time?

A. I paid interest into the R.F.C., but I don't think [109] I paid them any principal. I am not sure that I did. I don't think I did. But the principal was all paid up after Mr. Hogan came in.

Mr. Montgomery: That is all. Call Mr. Del Giorgio. [110]

## M. DEL GIORGIO

a plaintiff herein, called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified, as follows:

The Clerk: Will you state your name?

A. M. Del Giorgio.

## Direct Examination

Q. By Mr. Montgomery: I show you this Exhibit 4, Mr. Del Giorgio. Is this your signature?

A. Yes.

Q. Will you state the circumstances of signing that paper?

A. Well, they called me to the office—I was there and they called me in there and they tell me they had to raise this capital on account of them bonds. So they said they had to pay this, pay this money. I told them I didn't have any money. They said you don't have to have the money.

Q. You gave them a note?

A. So I gave them a note.

Q. Now, did you know anything about any correspondence between the president of the bank and the Comptroller?      A. No.

Q. None of that was discussed with you?

A. No.

Q. You are a stockholder only? [111]

A. A stockholder; yes.

Q. Did you ever discuss it with the officers of the bank afterwards?      A. No.

(Testimony of M. Del Giorgio.)

Q. Is this all you know about it?

A. That is all I know. I know they had a few names in there and I put my name in it.

Mr. Montgomery: Cross-examine.

Cross Examination

Q. By Mr. Dockweiler: Your name is Mr. Del Giorgio? A. Del Giorgio.

Q. Mr. Del Giorgio, when was this document, Plaintiffs' Exhibit No. 4, first shown to you by any officer or director of the bank?

A. Well, I was at the bank. They wrote me a letter.

Q. Wrote you a letter. What did they say in the letter? A. They said to call at the bank.

Q. To call at the bank. Do you remember in what month that was of 1931? A. I don't remember.

Q. But it was in 1931? A. Yes, sir.

Q. Was it in the summer time? A. Yes.

[112]

Q. You would say shortly after June 18, 1931?

A. Something like that.

Q. So they wrote you a letter to come into the bank, and who saw you at the bank?

A. Mr. Dolan.

Q. Mr. Dolan.

A. And another director, I think Mr. Tuffree.

Q. Mr. Tuffree.

A. I think so. I don't know for sure.

(Testimony of M. Del Giorgio.)

Q. And were they both together?

A. Both together.

Q. And they both saw you in the bank?

A. Yes.

Q. And what did they say to you and what did you say to them?

A. Well, they tell me they have to raise some money. And according to these bank—what it says, the examination of the bank that examined the bank, and they got to raise some money; and according to these, all the stockholders had to raise some money and raise \$175 a share. So I told them I didn't have any money. They said, "That is all right." They said, "Sign the note." So I did sign the note.

Q. Then, as I understand, they said to you that the bank had to raise some money?      A. Yes.

[113]

Q. Did they tell you for what reason?

A. Well, they just told me they had an examination of the bank.

Q. Have had an examination of the bank?

A. Yes; some examiner. Anyway, some kind of an examiner, so they said, they told me they had to raise some money.

Q. And that every stockholder had to pay \$175 a share?

A. I don't know whether every stockholder paid or not, but I know I went in there. I know some didn't go in.



(Testimony of M. Del Giorgio.)

Q. But in any event, you signed at that time, that very day?      A. That very day.

Q. For \$875?      A. Yes.

Q. And you did not pay any cash?      A. No.

Q. You made a note?      A. Yes.

Q. When did you begin paying on the note?

A. Well, I never did pay on the note.

Q. You never have paid?

A. The final assessment I paid up, the last.

Mr. Montgomery: He means the stockholders' assessment.

Q. By Mr. Dockweiler: Oh, yes. The stockholders' liability assessment? [114]      A. Yes.

Q. But you have never paid on this note?

A. No.

Q. Anything on this note?      A. No.

Mr. Dockweiler: That is all.

Mr. Montgomery: That is all. Call Mr. Kelly.

[115]

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L. J. KELLY,

a plaintiff herein, called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. L. J. Kelly.

Direct Examination

Q. By Mr. Montgomery: Mr. Kelly, were you one of the directors of the First National Bank?

(Testimony of L. J. Kelly.)

A. Yes, sir; in about '31.

Q. In 1931 at the time of this purchase of the bond depreciation you were on the board?

A. Yes, sir.

Q. Is this your signature on Exhibit 4 "L. J. Kelly 4,900"?

A. Yes, sir.

Q. Did you put up your note for that \$4,900?

A. Yes, sir.

Q. And have since paid that note?

A. Yes. I mortgaged my ranch and paid it.

Q. And have you received any part of that back?

A. Not a cent.

Q. Now, did you know of any correspondence with the Comptroller of the Currency with regard to this particular transaction? [116]

A. Not until after they got our notes, a few months afterwards before I ever heard of it.

Mr. Montgomery: Cross-examine.

#### Cross Examination

Q. By Mr. Dockweiler: Mr. Kelly, you were a director of the bank in 1930, in June, 1930, were you not?

A. I don't know. I know this business come up just after I was elected. I don't know whether it was 1930 or 1931.

Q. You have no recollection as to——

A. No. I was a new director, the last one on. I believe it is '31, because it was not long until the Bank Examiner began talking about the depreciation.

(Testimony of L. J. Kelly.)

Q. You can recall the first directors' meeting you attended, can you?

A. I believe it was at the annual meeting in '31, in January or February.

Q. Now, Mr. Kelly, I show you the original minute book which we have been using in the course of examination of witnesses during this trial. And I now point to the minutes of the directors' meeting of September 17, 1931. Now, you were present at that meeting, were you not?      A. Yes, sir.

Q. At which was read this letter of August 20, 1931, from the Comptroller's office to the directors of the bank, [117] and the president's reply, Mr. Dolan's reply of September 8, 1931?

A. Well, I——

Q. In that connection to refresh your memory, refer to the last paragraph of the minutes of that meeting.      A. Well, I don't remember now.

Q. Well, do you think if it says that these two letters were read that they were read at that time?

A. I don't know. I can't remember.

Q. You were present probably during the course of the whole meeting?

A. I was supposed to be there. I didn't miss very many of them.

Q. You didn't miss many. You have no independent recollection?      A. I can't say right now.

Q. Taking the subsequent meeting of November 19, 1931, pointing to the minutes of that meeting, I

(Testimony of L. J. Kelly.)

will ask you to direct your attention to the last paragraph and state whether or not you recall whether that letter dated October 30, 1931, from the Deputy Comptroller to the Board of Directors of the bank was read at the meeting?

A. I remember some of those letters being there. I just can't take that letter or a date. We always said we would never do it.

Q. Referring to this letter of August 20, 1931, [118] being the first of the Comptroller's letters to which I have referred, do you ever recall any correspondence in which it would appear in words to this effect: "Although you have been previously advised in this regard this office wishes to bring to your attention again at this time the fact that contributions made to restore capital should be made unconditionally and without expectation of reimbursement. Please advise in your reply to this letter that you have the correct understanding in this regard." Do you remember hearing any letter like that?

A. Very often; but we never consented.

Q. Very often; but you never consented. And then the later letter to which I referred, the Comptroller's October 30, 1931, letter, such a paragraph as this do you remember: "It should be clearly understood by all parties concerned that these contributions are voluntary and unconditionally made, with no expectation of reimbursement from the

(Testimony of L. J. Kelly.)

profits or earnings of the bank." Do you recall that? A. We had the letters there.

Q. Now, you say that when you signed this June arrangement you did not pay cash?

A. I paid a note.

Q. Oh, you gave a note? A. I gave a note.

Q. Gave a note and no cash? [119]

A. Yes, sir.

Q. Your amount was \$4,900, is that right?

A. Yes, sir.

Q. And you gave a note for \$4,900. When did you begin to pay off on that note?

A. When Mr. Hogan came.

Q. That would be after 1934?

A. 1934. I mortgaged my ranch and paid it.

Q. And that has been since 1934? A. Yes.

Q. Following those letters from the Comptroller's office in 1931, did you ever make any effort to, we will say, reestablish the status quo or let the Comptroller know that you were operating on a theory that you were going to get your money back out of the appreciation in the bond account?

A. I don't get what you mean.

Q. In other words, did you ever let the Comptroller's office know that you did not consider that a voluntary contribution made without expectation of reimbursement?

A. Well, I don't know it was. I just figured the way we signed it up, and we done it on the advice of the Bank Examiner.

(Testimony of L. J. Kelly.)

Q. And those letters from the Comptroller never inspired any doubt in your mind?

A. Well, at that time the government didn't want to [120] close the banks, any of them. If they closed that bank, every little bank in the county would close, all other banks. The government didn't want to do it.

Q. But you did nothing, in other words?

A. Well, I couldn't. I didn't know enough at that time.

Mr. Dockweiler: Yes. That is all in cross examination.

Mr. Montgomery: Just a minute.

#### Redirect Examination

Q. By Mr. Montgomery: Are you familiar with your father's affairs? He is one of those signers?

A. Yes, sir.

Q. Did he pay by note?

A. Yes; he paid by note and then his note was immediately sold to the Federal Reserve Bank.

Q. That is F. Kelly \$5,000? A. Yes, sir.

Q. And do you know whether he has paid off that note or not?

A. Yes, sir. They came out and attached his ranch and took it away from him.

Q. Has he received any portion of this?

A. Not a cent.

Mr. Montgomery: That is all. [121]

(Testimony of L. J. Kelly.)

Mr. Dockweiler: That is all.

Q. By Mr. Montgomery: He was not a director, was he?           A. Yes, sir.

Mr. Heinz (William J. M. Heinz): Mr. Dockweiler, I think it could be stipulated on behalf of my client, Ernest F. Ganahl, that the allegations in the complaint are true and coincide with the records; and in that event it will not be necessary to produce Mr. Ganahl personally, who is very busy today.

Mr. Chipkin: We can stipulate that he will testify in substantially the way he alleges in his complaint, but I do not think we can stipulate it is true.

Mr. Heinz: It is then stipulated that Ernest Ganahl executed this note of \$1,750, on which he paid the sum of \$550.89 principal and the sum of \$150.31 in interest; that he delivered this note under this agreement, purchasing depreciation in the bond account; that he thereafter filed this claim with the Receiver for this amount, and that no part of that money advanced under said note has been repaid by the bank.

Mr. Chipkin: All but that he paid it under an agreement. We deny an agreement between the bank and Mr. Ganahl.

Mr. Heinz: Purported agreement we will put it that way, referring to Exhibit 4.

(Testimony of L. J. Kelly.)

Mr. Montgomery: In other words, his signature is here on the Exhibit 4. They will stipulate that.

[122]

Mr. Dockweiler: Oh, we will stipulate that that is his signature.

Mr. Chipkin: Yes; that that is his signature.

Mr. Heinz: That the amount set after his name is the amount subscribed by him in the manner in which I have now stated?

Mr. Chipkin: Yes; that is correct.

Mr. Montgomery: That is the fifth signature here.

Mr. Purpus: There is another party having the name of Yungbluth, F. A. His name also appears upon this document for \$1,750. It shows "11-23-32" alongside of "\$1,750.00." You in your answer—where is that, Judge, do you know? There is no part of that has been repaid. I find alongside of that document—he is not in court today—that the date set opposite is November the 23rd, 1932, so I presume it was paid. We can check the books. It is a note or it is money, either one. Anyhow, he gave a note or money, did he not? It wouldn't make any difference for the purpose of this action, as I see it.

(Counsel conferring together privately.)

Mr. Montgomery: We will put on Mr. Hogan and do that later. No; we will put on Mr. Dolan.

[123]



F. H. DOLAN,

a plaintiff herein, called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. F. H. Dolan, or Francis H.

Direct Examination

Q. By Mr. Montgomery: Mr. F. H. Dolan. I show you Plaintiffs' Exhibit No. 4, and ask you if the second signature there is yours?

A. Yes.

Q. That is \$32,500. How did you pay that, in cash or note? A. In cash.

Q. At what time?

A. In the first part of July, 1931.

Q. Did you know anything about any correspondence from the Comptroller of the Currency at the time you paid this cash? A. No.

Q. When did you first learn of any such correspondence?

A. Oh, I think it was—as I recall, it was during the trial we had here some time back.

Q. The one against your brother?

A. Yes; something of that kind. I might have heard [124] of that before, but that is my best recollection.

Q. How did you carry this item on your books?

A. I carried it as a——

Mr. Dockweiler: Oh, objected to as incompe-

(Testimony of F. H. Dolan.)

tent, irrelevant and immaterial, not binding, of course, on the bank.

The Court: That is correct. Sustained.

Q. By Mr. Montgomery: Did you have any conversation with Bank Examiner Lamm with regard to the method of handling this matter? A. No.

Q. Did you have any with the subsequent Bank Examiner?

A. No. I might have had a conversation with Mr. Lamm in regard to this matter prior to my putting up this \$32,500 which I did. I rather recall having a conversation at a meeting.

Q. With Mr. Ganahl—I mean Mr.——

A. With Mr. Lamm.

Q. Have you received any portion of this \$32,500 back? A. No.

Q. Did you know what your stockholder's liability was at the time you put up this \$32,500?

A. Yes.

Mr. Dockweiler: Objected to as incompetent, irrelevant and immaterial. It obviously could not be known in 1930. The bank did not fail until 1934, your Honor, or 1931. [125]

The Court: I suppose he means what his maximum liability would be.

Mr. Montgomery: Yes.

Q. Do you know what your maximum liability was? A. Yes.

Mr. Montgomery: You may cross-examine.

(Testimony of F. H. Dolan.)

Cross Examination

Q. By Mr. Dockweiler: Now, Mr. Dolan, do you remember when you became a director of the bank? A. No; I do not.

Q. Well, in what year?

A. No. I was a poor director.

Q. A poor director?

A. I was not—I don't live in Anaheim.

Q Oh, yes.

A. And I was the fall guy, as they say—as I say.

Mr. Montgomery: Better talk court language.

The Witness: Beg pardon?

Mr. Montgomery: Better talk court language so the Judge will understand.

The Witness: I beg your pardon.

Q. By Mr. Dockweiler: Mr. Dolan, were you at any time an officer of the bank? A. Yes.

Q. What officer? [126]

A. I think they made me vice-president, honorary.

Q. You don't know when, what year?

A. No.

Q. In that connection I invite your attention to the minute book which we have used——

A. Yes.

Q. ——during the course of this trial, and invite your attention, for instance, to the meeting of September 17, 1931, at which it would appear that you were one of the directors present.

(Testimony of F. H. Dolan.)

A. Yes.

Q. I will ask you whether or not that would refresh your memory as to whether or not you were present at a meeting in September.

A. I might have been there and gone away.

Q. You might have been and gone away?

A. Yes; I might have showed up at the meeting and then left, like I did at times, so that would not refresh my memory a great deal.

Q. You never caused the secretary to note the time you spent?

A. No; I don't suppose. No; I am very bum on this business.

Q. Referring to the last item noted by the secretary in the minutes, the reference to "a letter from the Treasury Department dated August the 20th and Mr. Dolan's reply [127] thereto dated September 8th were read and ordered filed", do you recall, looking over those two letters, whether or not you heard them read at that time, and particularly I invite your attention to the fourth paragraph of the Comptroller's August 20, 1931, letter.

A. No. This is all very recent to me. It has come up since, all this matter. I can't recall myself knowing about these matters.

Q. Do you say positively that you did not hear it read on that occasion?

A. I could not say positively; no. But I can't refresh myself in any way that I know of on these

(Testimony of F. H. Dolan.)

matters. I figured that I was putting up \$32,500 and I was buying a depreciated bond account; and it was explained to me that the interest from that bond account would pay my investment. Otherwise, there would be a return in investment, as well as keeping the bank going.

Q. There would be a return in your investment, as well as keeping the bank going?

A. A further investment. It was explained to me along that line.

Q. By keeping the bank going you mean——

A. I think that has come up later in my mind. I don't think there was ever anything discussed about the bank being closed.

Q. Never at any of those meetings that you ever [128] attended?

A. No; I don't recall any of those meetings that there was ever discussion. They were not talking about closing our bank.

Q. You mean that you advanced \$32,500 in cash simply as an investment to buy a depreciated bond account?

A. I did not—I will answer it: I did not deposit the \$32,500 or make the purchase under stress.

Q. Well, no; I just asked you the question. You say you did it as an investment?

A. It seemed to be an investment feature to it.

Q. Well, what was the other feature besides the investment?

(Testimony of F. H. Dolan.)

A. I was interested, naturally, in the bank.

Q. You mean in preventing the bank being closed?

A. No. I was interested in seeing the bank do well if possible.

Q. Was it doing very well at that time?

A. Well, most of the things were not doing very well at that time.

Q. Wasn't it a fact it was doing rather badly?

A. Well, the bond account was in a very bad shape, as I recall, and we had great faith in the bond account. We thought that they were like real estate, that they would come up.

Q. And you knew at that time that the Comptroller's [129] office was requiring the directors to build up that bond account, did you not?

A. Well, I can't say that we were forced in any way.

Q. No, no. Just whether you knew that the Comptroller's office was compelling the bank's—

A. I think there was some discussion with me with the officers, with my brother, that it would be a good thing to do.

Q. Well, as a director, what did you think would happen if you did not contribute \$32,500?

A. I don't know. I suppose the general course would take place if that was not taken and other things had gone on. I suppose that bank might have to reorganize and do some other things.

(Testimony of F. H. Dolan.)

Q. Did it never occur to you that if you did not remedy the bond situation the Comptroller would place a Receiver in charge?

A. No; not exactly.

Q. I understand, however, that it was not merely the investment feature that actuated you in making this \$32,500 contribution?

A. I understood it would make our investment, our bank, in a better position to make the investment.

Q. But you made that contribution?

A. Not a contribution; never.

Q. I mean whatever it was? We will just call it— [130]

A. Investment we called it.

Q. You call it "investment." What did you think you had for your investment? You knew you did not own the bonds, didn't you?

A. Well, I don't know whether I did or not. I understood that they were to be set aside. It was the intention that interest received from bonds equalling the amount of depreciation purchased be set aside for the use of the undersigned. An appraisal of the bond list shall be made each six months and should a decrease in the depreciation be shown, the amount shall be divided pro-rata among the stockholders purchasing depreciation in bond account.

Q. You were a director of the bank during the summer and succeeding months and succeeding

(Testimony of F. H. Dolan.)

years until it was taken in charge of by the Comptroller, were you not?      A. I was.

Q. And you would interest yourself in the bank's financial condition from time to time, wouldn't you?

A. Very little. As I say——

Q. Did you ever look over a bank statement?

A. I don't know bank statements. I am a farmer and a real estate man. I know nothing about bonds or organizations. I am a one-man affair.

Q. You never noted in any statement gotten out by the bank that there was such and such an item of bonds and [131] then the aggregate amount?

A. I don't believe I could have analyzed it if I had seen it.

Q. When did it first occur to you, or when did you first hear that the condition of this bank financially was bad and that it might be taken over by a receiver?      A. I never heard that statement.

Q. You attended directors' meetings?

A. Yes.

Q. Right along?      A. Yes.

Q. Every month, I suppose?

A. I never heard the bank was to be closed. No one ever said they would turn the keys on it, Mr. Waldron or Mr. Lamm. I met them a time or two, not very often.

Q. And these letters from the Comptroller's office that were read did not inspire you with that thought?

A. Did not impress me along that line.



(Testimony of F. H. Dolan.)

Q. And you haven't today any clear idea as to whether or not you were buying an interest in the bonds or merely an interest in what was called the depreciation of the bond account?

A. Well, indeed, I thought I was purchasing something, buying something.

Q. Well, something that you could get hold of, you mean, like—— [132]

A. Yes. I thought I was buying an interest in a depreciated bond account; whatever would come back would come back to me, and it was shown to me that it would come back.

Q. And so, if a bond worth nominally \$100, upon depreciation had gotten down to, say, \$40, did you figure that you owned a part of that bond?

A. The raise.

Q. Or only the point between \$40 and whatever it might be?      A. Might be, yes.

Q. You didn't think you owned any part of that \$40?

A. I don't know how to explain it, just what it would be, but I expected that was enough in there that would show up to pay me back, would come back and pay us back, and it would be just a loan or a temporary affair.

Q. A loan, would you say?

A. Well, it was an investment and it would be paid back and we would get interest.

Q. Do you remember who drew up that memorandum?

(Testimony of F. H. Dolan.)

A. No. It was sent to me. I requested it and my brother sent me one of those copies to put in my files.

Q. You are referring now to what could be called the subscription list?      A. Yes.

Q. That is Exhibit No. 4? [133]

A. Yes. I couldn't say when it was done now, but it has been in my files for years and I have put it on my financial statement as \$32,500 bonds invested, and carried it as such.

Mr. Dockweiler: That will be all, thank you, on cross examination.

Mr. Montgomery: That is all. Call Mr. Hogan. Call Mr. Hogan under 2055. [134]

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### J. V. HOGAN,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. J. V. Hogan.

#### Direct Examination

Q. By Mr. Montgomery: Mr. Hogan, you are the Receiver of the defendant bank, or, rather, you are one of the defendants in this action?

Mr. Dockweiler: No. He appears on behalf of the bank only.

(Testimony of J. V. Hogan.)

Mr. Montgomery: I say, you appear on behalf of the Anaheim First National Bank, defendant herein? A. Yes.

Q. You have handled the business since January, 1934? A. January 15, 1934.

Q. Now, what is the situation with regard to F. A. Yungbluth who has signed this Exhibit 4? You have seen this before, haven't you?

A. Yes.

Q. Now, this shows a payment by him of \$1,750. Was that cash or a note or what?

A. I couldn't state.

Q. Well, don't your books show?

A. No. We haven't the records here that would [135] disclose that, part of the receipts.

Q. Where are they?

A. They are in my bank in Huntington Park.

Q. Haven't you any data up here at all that shows what the situation is with regard to Yungbluth? A. No.

Q. Have you any independent recollection that Yungbluth gave a note which you transferred to the Federal Reserve Bank?

A. No. I have no dealings with Mr. Yungbluth, so far as this subscription is concerned.

Mr. Purpus: May I interrupt just a moment? Mr. Dolan says he knows he paid it in cash, if that would satisfy you.

Mr. Chipkin: I understand he paid it to the Federal Reserve Bank.

(Testimony of J. V. Hogan.)

Mr. Purpus: That is right; in 1932.

Mr. Chipkin: We will say he paid it to the Federal Reserve Bank. We will stipulate.

Mr. Purpus: He paid it on a note and paid it up?

Mr. Chipkin: We will stipulate that he paid it to the Federal Reserve Bank.

Q. By Mr. Montgomery: Which is a note that was given to take up this subscription?

A. Well, I couldn't say, I couldn't say.

Mr. Chipkin: We will stipulate that. [136]

Mr. Montgomery: I see. We will stipulate that.

Q. You never paid any part back? A. No.

Q. As a matter of fact, you paid none of these stockholders back? A. No.

Q. Any of this money that they had put up?

A. No.

Q. What is the present situation of your bond account, got any left?

A. No. The bonds were—the majority of the bonds of the Anaheim First National Bank were pledged to the County for County funds, and also to the City of Anaheim.

Q. I didn't ask you the detail. I am asking you if you have got any left?

A. No; I don't believe so.

Q. Then the bond account is all gone now, is it?

A. Practically. I could refer to my books and give you a more intelligent answer.

Q. There is something you want to look at?

(Testimony of J. V. Hogan.)

A. I might state that Mr. De La Mare, my first assistant office manager, is here, who is very familiar with the books of the Anaheim First National. Naturally, I have some two or three banks to liquidate and it is almost impossible for me to remember the transactions that transpire in each one of the banks. [137]

Mr. Dockweiler: I suggest, when you finish with Mr. Hogan, Mr. Montgomery, that you use Mr. De La Mare who has been the man under Mr. Hogan?

Mr. Montgomery: I have got enough now to satisfy me. He said the bond account is gone, and that is all I want.

Mr. Purpus: Is that the true fact from the books?

Mr. Dockweiler: No. There is some of them left.

Mr. Montgomery: What have you got, \$20,000 left for us in value—I mean market value?

Mr. Dockweiler: Were you through with Mr. Hogan?

Mr. Montgomery: Yes; I am through.

Mr. Dockweiler: I would like to ask Mr. Hogan a few questions, seeing that he is on the stand.

#### Cross Examination

Q. By Mr. Dockweiler: Now, Mr. Hogan, do you have a general idea of the condition of the bank as you took it over, in this, do you know whether or not you took over certain bonds along with the bank? A. Yes, sir.

(Testimony of J. V. Hogan.)

Q. And you have a general idea of what the face value of those were; that would be the par value or——

Mr. Montgomery: Now, I object to that as not proper cross examination.

Mr. Dockweiler: Well, I will reserve that and put him on at a later time to clarify that. [138]

Mr. Montgomery: All right.

Mr. Dockweiler: And I will withdraw that question and later on use him on direct.

Mr. Montgomery: May I inquire how long it will take him to figure out that, and then we can have the exact figure. Can you have that in three minutes or five?

The Witness: If you can read it.

Mr. Montgomery: Why not let it go over until tomorrow morning and then they can have the information.

(Whereupon an adjournment was taken until Wednesday, July 21, 1937, at 10:00 o'clock a. m.)

[139]

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Los Angeles, California,  
Wednesday, July 21, 1937, 10 A. M.

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(Parties present as before.)

Mr. Montgomery: I think it was suggested last night that Mr. De La Mare would take the stand in place of Mr. Hogan in order to prove up the bond account.

(Testimony of J. V. Hogan.)

The Court: Yes.

Mr. Dockweiler: Unless you want to stipulate to it.

Mr. Montgomery: I don't know the facts myself, but I think probably he can tell us.

Mr. Dockweiler: As to his qualifications, he having kept the books and been in charge of all of the ledger accounts of the receivership since Mr. Hogan took it over in January, 1934, will you stipulate?

Mr. Montgomery: Oh, so stipulated, certainly.

Mr. Dockweiler: And that he has kept them under the directions of Mr. Hogan?

Mr. Montgomery: All right. Will you take the stand, and you had better take your list along. [140]

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ROY DE LA MARE,

called as a witness on behalf of plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. De La Mare, Roy.

Direct Examination

Q. By Mr. Montgomery: Mr. De La Mare, you have the books of the Anaheim First National Bank and have gone over them, have you?

A. I didn't quite understand the question.

Mr. Montgomery: Will you read it, please?

(Question read by the reporter.)

(Testimony of Roy De La Mare.)

A. I have some of the books here, not all of them.

Q. You have the books that show the bond account?  
A. Yes.

Q. How many bonds were in the account on July 20, 1931, in dollars and cents, according to the book value?

A. I would have to refer to the bank ledger which is over there on the table.

Mr. Montgomery: May we have the bank ledger?

The Court: What is the date again that you have given?

Mr. Montgomery: July 20, 1931. I think the book value was of June 24, 1931.

Q. Is it not?

A. Which date do you wish? I have both dates here. [141]

Q. Let us take the book value on July 20, 1931.

A. On July 20, 1931, the books of the Anaheim First National Bank disclose a book value \$219,602.26 in other bonds.

Q. "And other bonds"?

A. "In other bonds." That is the total of the account in other bonds.

Q. What do you mean by "other bonds"? You mean there was bonds on which there was no depreciation?

A. I couldn't state that question. I am merely testifying to what the books of the Anaheim First National Bank show on that particular date.



(Testimony of Roy De La Mare.)

Q. All right. What does it show as of June 24, 1931?      A. \$384,439.80.

Q. Were there some bonds in the account that were not depreciated?

A. According to the records of the Bank Examiner, whose copy of whose examination was in the book, it showed some of the bonds did not show any depreciation as of that date.

Q. What was the book value on June 24, 1931, of the bonds which did not show such a depreciation?      A. \$69,171.73.

Q. How much was the book value of the bonds on June 24, 1931, that showed a depreciation?

A. \$312,279.84.

Q. Was there a difference in the book value of bonds [142] between the 18th day of June and June 24, 1931?

A. Will you please repeat that question?

(Question read by the reporter.)

Q. That is to say, was the value on June 18 approximately the same as it was on the 24th?

A. It was less by \$2,095.

Q. By the Court: Which date? You say the June 18th was less than June 24th?

A. No. June 24th was less than June 18th.

Q. By how much?      A. \$2,095.

Q. By Mr. Montgomery: And do you happen to have the figures of the par value?

A. No. That difference was occasioned by a sale of bonds.

(Testimony of Roy De La Mare.)

Q. Of these \$312,279.84 book value of bonds on June 24, 1931, there were exchanges made, were there not, for other bonds?

A. Numerous exchanges.

Q. And what was the total of those exchanges?

A..The total book value of the exchanges made was \$134,902.41.

Q. And the book value of those that were received in exchange amounted to what?

A. \$140,193.55.

Q. How much of the original bonds that were in the [143] account on June 24, 1931, were turned over to the receiver?

A. That would require a little figuring.

Q. Well, what would you do, deduct \$134,902.41 from the \$312,279.84?      A. Not necessarily.

Q. Were any of the bonds disposed of that are not shown in this exchange list of \$134,902?

A. Any of what bonds?

Q. Any of the original list of June 24, 1931?

A. Were any of them disposed of, did you say?

Q. Yes; other than by the exchanges?

A. When?

Q. Between June 24, 1931, and the time that the bonds were turned over to the receiver.

A. Yes.

Q. Have you a statement showing how many of those bonds were sold?      A. There was——

Q. Perhaps I can shorten it. Can you give us the amount in book value of bonds that was turned

(Testimony of Roy De La Mare.)

over to the receiver on—what was it, January 15, 1934?

A. Do you mean by that the original list—from the original list and from the exchanges?

Q. Yes.

A. If I may have my other ledger over there, the receiver's ledgers, I can probably tell you that. (Examining [144] book.) The book value of bonds shown by the books of the bank turned over to the receiver, \$217,807.76.

Q. That was the book value as of the date of turn-over? A. Yes.

Q. Have you the book value of the bonds that remain on hand, if any? A. \$77,549.67.

Q. That is the book value as of what date?

A. As of the same date the receiver took them over.

Q. You don't know what the present value is?

A. Market value?

Q. Yes.

A. Taken from the bonding house this morning, the market value of those bonds is \$16,590.

Mr. Montgomery: Cross examine.

#### Cross Examination

Q. By Mr. Dockweiler: Mr. De La Mare, you have, pursuant to my suggestion, prepared a list reflecting the bond condition of this bank, that is, what we will call the portfolio of bonds, beginning with June 24 and really ending as of today?

A. Yesterday.

(Testimony of Roy De La Mare.)

Q. Or yesterday? A. Yes, sir.

Q. And you have that before you, do you not? [145]

A. I have.

Q. And that consists of two pieces of paper, does it not? A. Yes.

Q. And in the preparation of these two documents what have you had before you?

A. The books of the bank, the receiver's records, and a copy of the examiner's report dated June 24, 1931.

Q. That is Examiner Waldron?

A. It so states on the report.

Q. And by the terms "books of the bank" you refer to the bank during the course of administration prior to the receiver taking it over?

A. That is correct.

Q. And then the receiver's books being the books reflecting the condition of the bank since his taking the bank over? A. All of the operations.

Q. The receiver's transactions, in other words. Are you able to tell from these documents what bonds the bank had on June 24th, which appears to be the date of this contribution arrangement?

A. You mean all the bonds, Mr. Dockweiler?

Q. Yes. Or maybe I could put it this way: Ask you some questions directly from your prepared memoranda, and then you explain what the various columns represent. [146] Probably that would be simpler. Now, I have before me what appears to be

(Testimony of Roy De La Mare.)

one of the documents prepared by you, entitled "Disposition of Bonds." In the first column what is to be noted? A. The par value.

Q. The par value of the bonds as of what date?

A. June 24, 1931.

Q. Yes. In the second column?

A. Description of the issue.

Q. That is, of each issue of bonds?

Mr. Montgomery: Might I look at this just a moment?

Mr. Dockweiler: Yes, sir.

Mr. Montgomery: And get an idea of what you are talking about.

(Counsel conferring privately over exhibit.)

Q. By Mr. Dockweiler: Now, the second column, as I understand, will give us a description of the bonds individually, the rate of interest and the date of maturity, is that right? A. Correct.

Q. Then in the third column what do we find?

A. The third column indicates any of those bonds pledged by the bank prior to suspension for deposits of public moneys, or for bills payable, as the bank having borrowed money from some organization.

Q. And to whom would they be pledged, do you find, how [147] many pledgees? A. Three.

Q. Three pledgees.

Mr. Montgomery: Just a minute. I would like to interpose an objection, your Honor, to any evidence as to what became of bonds after the con-

(Testimony of Roy De La Mare.)

tribution was made, except that they passed into the hands of the receiver and have now been disposed of. In other words, they were not set aside for us, so I think it is immaterial what the bank did, unless it is before the date of the money being put up by the various contributors.

Mr. Dockweiler: Well, your Honor——

The Court: I will allow it. It will be harmless on your argument of the law, if it is in error.

Mr. Montgomery: Yes.

Mr. Dockweiler: Then the objection will be overruled, saving an exception?

The Court: Yes; an exception.

Q. By Mr. Dockweiler: How many such pledgees were there? A. Three.

Q. Who were they?

A. The treasurer of the City of Anaheim, the treasurer of Orange County, and the Reconstruction Finance Corporation.

Q. And an aggregate of how many such bonds were pledged to the three pledgees, roughly? [148]

A. \$90,000 par value.

Q. \$90,000 out of a total of how many par value?

A. I did not total that.

Q. Well, I will withdraw the question because the document itself will reflect it, your Honor. Now, those pledges were by the bank or by the receiver?

A. By the bank prior to the receiver taking possession of the assets of the bank.

(Testimony of Roy De La Mare.)

Q. Yes. Do you know the circumstances of the pledging?

A. Not other than the pledge agreements, that the various treasurers and the Reconstruction Finance Corporation's copy of the bill payable document of the Anaheim First National Bank to the Reconstruction Finance Corporation.

Q. And those are in the files of the bank?

A. Yes, sir.

Q. And they were pledged to secure public deposits, were they?

A. The first two were pledged to secure public deposits, and the other one a loan that the bank obtained from the Reconstruction Finance Corporation.

Q. The fourth column will reflect what?

A. Who sold the bonds.

Q. Who sold the bonds, each and every one of the bonds listed there. That would show the sales by the pledgees, if any, would it not?

A. Yes. [149]

Q. And show sales by the bank itself during the course of administration prior to the receiver taking it over? A. Yes.

Q. And sales by the receiver under direction of the Comptroller? A. Yes, sir.

Q. Any other sales?

A. There are two items which represent payments by the liquidating committees of the issues.

Q. Oh, yes. And that is all that is covered by

(Testimony of Roy De La Mare.)

that fourth column, is that right?           A. Yes sir.

Q. Then the fifth column will show what?

A. The date of the sale.

Q. The date of the sale on each and every one of those cases that you have referred to as sales?

A. That is right; yes, sir.

Q. Then the sixth column?

A. Proceeds of the sale.

Q. That is cash received?

A. Cash received.

Q. Or whatever consideration was received?

A. Yes, sir.

Q. And then in the seventh column?

A. It shows the book value of bonds as shown by the books of the bank on June the 24th, 1931.

[150]

Q. The book value as shown on June 24, 1931. Then the eighth column?

A. Shows any appreciation between the book value as shown by the books of the bank on June 24, 1931, and the proceeds of sale of the bonds.

Q. In other words, between June 24, 1931, and the date of sale?           A. And the date of sale.

Q. Then the last column reflects what?

A. The depreciation between the book value of bonds on June 24, 1931, and the amount received at the sale, at the date of sale.

Q. Does this document represent all of the bonds in what I would call the bank portfolio or belonging to the bank on June 24, 1931?           A. No, sir.



(Testimony of Roy De La Mare.)

Q. Have you another document with you that will give us an idea of any other bonds that there were at that time? A. Yes.

Q. Now, what is that?

A. The examiner's report.

Q. The examiner's report. What other bonds were there in addition to this list on——

For the purposes of identification, may we at this time ask for a number for identification?

The Clerk: Defendant's H for identification.

[151]

Mr. Dockweiler: The last question, Mr. Reporter.

(Question read by the reporter.)

Q. By Mr. Dockweiler (continuing): ——this document concerning which you have just testified and which has been marked for identification as Exhibit H.

A. It was \$69,171.73 book value of bonds and \$8,134.38 of U. S. Liberty Bonds and \$51,000 U. S. Consols.

Q. That would make an aggregate of, roughly?

A. \$128,000, approximately.

Q. \$128,000 in addition to those listed on Exhibit H? A. That is correct.

Mr. Purpus: What were the \$51,000, please?

Mr. Dockweiler: What?

Mr. Purpus: What were the \$51,000, please?

A. U. S. Consols.

(Testimony of Roy De La Mare.)

Q. By Mr. Dockweiler: Why did you not list them on Exhibit H?

A. The bonds that I just testified to did not show any depreciation on June 24, 1931.

Q. They did not show any depreciation on June 24, 1931. What has become of those bonds that you just testified to, aggregating about \$128,000 par value? That is par value or book value?

A. Book value.

Q. Book value. What has become of them?

A. The U. S. Consols were pledged to secure circulation [152] and have been liquidated to pay off the circulation.

Q. Pledged by whom? A. By the bank.

Q. Itself? A. Yes, sir.

Q. And paid off to secure liquidation?

A. To secure the circulation.

Q. To secure circulation. Paid off at par or paid off at the book value as—in any event, Mr. De La Mare, those were bonds that showed no depreciation on June 24, 1931? A. That is correct.

Q. So they are not taken into that account?

A. These bonds are not taken up as an asset by the receiver.

Q. I will ask you whether this Exhibit H will show that all the bonds there have been sold?

A. Yes; all the bonds that appear on this exhibit excepting two items.

Q. What are the two?

(Testimony of Roy De La Mare.)

A. \$15,000 General Water Works and Electric Corporation—that is par value—and \$5,000 par value F. & W. Grand Properties.

Q. Are they being held in the portfolio of the receiver?

A. The bonds themselves are; yes, sir.

Q. The bonds are. What was the value at June 24, 1931, of each of those? [153]

A. General Water Works and Electric Corporation, \$15,000 par value had a book value of \$14,287.50; \$5,000 par value of F. & W. Grand Properties had a book value of \$4,779.16.

Q. Those two, they are how many bonds?

A. \$20,000 par value.

Q. \$20,000 par value, having a book value on June 24, 1931, of what?

A. Approximately \$19,000.

Q. \$19,000; almost par, then? A. Yes, sir.

Q. \$20,000 against \$19,000. And those now have a value of—have you it listed there?

A. Those have no value.

Q. Have no value.

A. We have received payments from the liquidating committee. The bonds are nearly liquidated now, so far as liquidating is concerned.

Q. Then you will never get back \$19,000?

A. No.

Q. How much has been paid by the liquidating committee on those bonds?

(Testimony of Roy De La Mare.)

A. On the General Water Works \$15,000 par value—General Water Works and Electric Corporation, \$1,775.25; and the \$5,000 F. & W. Grand Properties \$205.18.

Q. Is that just a single payment made with expectation [154] of a number of further payments?

A. The General Water Works was a single payment.

Q. Yes.

A. It is not expected that any further payments will be made.

Q. You say it is not?

A. It is not anticipated.

Q. How about the other?

A. The F. & W. Grand Properties was made in two payments. It is not anticipated that any further payments will be made.

Q. Otherwise, all the bonds that are on that list H have been disposed of?

A. That is correct.

Q. And of all that list, how many bonds show any appreciation after June 24, 1931, in comparing June 24, 1931, figure with the figure at which they were sold?

Mr. Montgomery: I object to that question as immaterial and irrelevant and indefinite, because an appreciation might exist in the market value of the bonds which is not reflected in what the receiver got for them. If I understand the account correctly, he is asking for the appreciation that the receiver got or that the bank got in making the sale.

(Testimony of Roy De La Mare.)

Mr. Dockweiler: The appreciation, if any, realized on the sale.

Mr. Montgomery: On the sale, yes. I think that is immaterial. [155]

The Court: I will let him state it and exception noted.

Q. By Mr. Dockweiler: How many show any appreciation over the June 24, 1931, figure at the time of sale? A. Two items.

Q. Indicate the par value of them and what they were sold for and the appreciation.

A. Ten thousand American Beet Sugar 6's of '35.

Q. And sold for—that is the June 24, 1931, value? A. \$8,932.51.

Q. And sold for?

A. \$461.59 in excess of book value.

Q. In other words, there was an appreciation of \$461.59 on that transaction?

A. That is correct.

Q. Then the next one?

A. \$5,000 Associated Telephone & Telegraph 51½'s, '55.

Q. June, 1931?

A. June 24, 1931, \$4,240.73.

Q. And sold?

A. For \$194.03 in excess of book value of June 24, 1931.

(Testimony of Roy De La Mare.)

Q. Therefore, the appreciation on the bonds sold at an appreciated value is how much?

A. \$655.62.

Q. \$655.62. Have you also a total of the depreciations, the aggregate of depreciations on sales?

[156]

Mr. Montgomery: Well, I would object to that on the ground it is immaterial, irrelevant and incompetent.

The Court: I will allow him to state and exception shown.

A. The total depreciation between June 24, 1931, book value and the amount realized at the sale of bonds, eliminating the two that I have just referred to that had an appreciation?

Mr. Dockweiler: Yes.

A. Shows a depreciation of \$137,058.67.

Q. And that was depreciation from a figure of approximately what as of June 24, 1931?

A. That question is difficult to answer, Mr. Dockweiler, because it also includes what exchanges were made in the bonds.

Q. Yes. Where bonds were exchanged what do the bank books reflect?

A. In most instances the bank reflected on its books the same book value for the bonds acquired as the bonds they were releasing in the exchange.

Q. In other words, it was a sort of "even-

(Testimony of Roy De La Mare.)

Stephen'' exchange so far as the bookkeeping was concerned?

A. Except in one or two instances.

Q. And were those material in those instances?

A. In one instance the bank substituted or exchanged \$20,000 par American Commonwealth Power 5½'s at 53 which [157] were shown on their books on June 24, 1931, to be a book value of \$19,300. They exchanged those for \$20,000 Cities Service Company 5's at 50, and they entered those on their books in the bond account at \$21,782.71, an increase of \$2400.

Q. Any other such transaction?

A. They exchanged \$5,000 National Public Service, which were shown on the books at a book value of \$5,000, for \$5,000 Central Public Service, which they entered on the books at a book value of \$5,256.25.

Q. A difference of?           A. \$256.25.

Q. Any other such transactions?

A. They exchanged another \$5,000 National Public Service, which was shown on their books at a book value of \$5,000, for \$8,000 Postal Telegraph & Cable Corporation 5's at 53, which they entered on their books at \$5,251.05.

Q. A difference of?           A. \$251.05.

Q. \$251.05?           A. That is correct.

Q. Any other?

(Testimony of Roy De La Mare.)

A. \$5,000 United American Utilities Co. 6's at 40, shown on the books at \$6,465, were exchanged for \$5,000 Utilities Power & Light Corporation 5's at 59, and entered on the books at \$6,529.33. [158]

Q. What is the difference there, roughly?

A. \$64.32.

Q. Are there any other exchanges?

A. \$5,000 United Public Utilities Co. 5½'s at 47, shown on the books of the Bank at \$4,887.50—that is, on June 24, 1931—which they exchanged for \$5,000 International Telephone & Telegraph Corporation 4½'s at 39 were entered on the books at \$5,236.82.

Q. A difference of?

A. Approximately \$340.

Q. Yes. Any other transactions in the way of exchanges?

A. \$5,000 Pacific Western Oil Co. 6½'s at 43, on the books of the Bank on June 24, 1931, at \$4,862.50 were exchanged for \$10,000 Denver, Rio Grande & Western Railroad 5's at 78, and entered on the books at \$6,140.37.

Q. A difference of about? A. \$1,310.

Q. Any other such?

A. \$15,000 Power, Gas & Water Securities Corporation 5's at 48, carried on the books on June 24, 1931, at \$14,850 were exchanged for \$15,000 St. Louis & San Francisco Railway Co. 4½'s at 78, at the same book value, \$14,850. Then later these same



(Testimony of Roy De La Mare.)

bonds were exchanged for \$15,000 St. Louis & San Francisco Railway prior lien 4's at 50 and entered on the books at \$15,451.61.

Q. Making a difference in that transaction of?

[159]

A. Approximately \$600.

Q. \$600. Any other exchanges?

A. There were several other exchanges but they were all exchanged at even value.

Q. Yes.

A. The same bonds taken in were exchanged for the same book value.

Q. You have been testifying from the second of these two documents concerning bonds that were prepared at my suggestion, have you not?

A. That is correct.

Mr. Dockweiler: For the purposes of the record I shall ask at this time that that document be marked for identification.

The Clerk: Exhibit I for identification.

Q. By Mr. Dockweiler: Now, with reference to these exchanges were any of them made by the receiver? A. No.

Q. They were all made, then, during the course of the administration of the bank prior to receivership? A. Prior to receivership.

Q. With reference to the various sales made, Mr. De La Mare, are you able to give us a general idea of during what years the sales were made of

(Testimony of Roy De La Mare.)

these bonds that were in the bond account in June of 1931?

A. With the exception of two items the sales were all [160] made—practically all made in 1934 and 1935.

Q. In 1934 and 1935 during course of liquidation of the bank? A. That is correct.

Q. Upon direction of the Comptroller, I take it?

A. With the exception of the bonds that were pledged.

Q. That were sold by the pledgee?

A. By the pledgees.

Q. County or city?

A. And the Reconstruction Finance Corporation.

Q. And the Reconstruction Finance Corporation, under the pledge agreement? A. Yes, sir.

Q. And during what year were they sold?

A. 1934.

Q. 1934. Were they in pledge prior to June 24, 1931? In other words, had they already been pledged in June, 1931?

A. As to the Reconstruction Finance Corporation I can't answer without referring to the records.

Q. Yes. In any event, the pledges were made by the bank itself and not by the receivership?

A. Yes, sir.

(Testimony of Roy De La Mare.)

Q. Do you have any document which, having in mind the sales of these bonds that were in the portfolio on June 24, 1931, or that were acquired afterwards representing exchanges for bonds in the portfolio in the depreciated bond account— [161] have you any document which will reflect the bonds now on hand in the receivership?

A. It is on this.

Q. Exhibit I is that ?           A. That is right.

Q. On Exhibit I. And from that, roughly how much in par value of such bonds are there?

A. \$86,000.

Q. \$86,000; represented by how many bonds, or how many kinds of bonds?

A. Nine different issues.

Q. Nine different issues. What was the aggregate book value of those issues on June 24, 1931?

A. \$77,549.67.

Q. What is the present market value? And if so, what do you base the present market value on?

A. The present market value shown here is \$16,590.

Q. A depreciation in value of how much?

A. \$61,000.

Q. \$61,000 of \$77,000 and some odd, is that right?

A. Approximately. There is a few cents difference.

(Testimony of Roy De La Mare.)

Q. Now, you base the present market value upon what?

A. The quotations obtained from William Cavalier & Company, stock and bond brokers, this morning.

Q. This morning, reflecting yesterday's market value or the last quoted market value? [162]

A. The last quoted market value.

Q. And these bonds that are under the heading "Bonds on hand at July 20, 1937" on Exhibit I are bonds that actually were in the portfolio on June 24, 1931, are they not, or represent exchanges of bonds that were in that portfolio at that time?

A. That is correct.

Q. Then, as to most of these bonds listed on Exhibit H they were in the bank, either themselves or in the form of bonds for which the bank made exchanges itself, from June 24, 1931, until the receivership occurred, except for sales made by the bank itself and sales made by pledgees, is that right?

A. No. The sales made by the pledgees were made after the receivership.

Q. Oh, after the receivership. Then, only allowing for the few sales by the bank itself or exchanges, they were all in the portfolio from June, 1931, until January, 1934, is that right?

A. That is correct.

(Testimony of Roy De La Mare.)

Q. And some of those, those listed on Exhibit I under the heading "Bonds on hand July 20-1937" are still in the hands of the receiver?

A. They are in the hands of the Comptroller of the Currency.

Q. Or the Comptroller of the Currency, at a depreciated [163] figure of \$60,000 under the \$77,000 as of June, 1931?

A. Approximately \$61,000.

Q. \$61,000 depreciation; that is in book value?

A. Yes.

Mr. Dockweiler: I think that is all the cross examination.

Mr. Montgomery: Plaintiffs rest. Oh, I might ask for a stipulation. May we have a stipulation that suits have been filed to enforce the assessment against F. H. Dolan, L. J. Kelly and F. Kelly? Tuffree paid his assessment, as I remember it.

Mr. Dockweiler: Let me see. The stipulation goes to what, Mr. Montgomery? I want to be sure.

Mr. Montgomery: That suits have been filed against L. J. Kelly, F. H. Dolan and F. Kelly on the stockholders' liability.

Mr. Dockweiler: May I say to your Honor that I do not think that has any bearing upon the matter. It probably would be a harmless stipulation, but the cases are legion that the question of stockholders' liability is wholly distinct from any effort made to get contribution and so on.

(Testimony of Roy De La Mare.)

The Court: We have allowed a very wide range here, understanding, of course, that it resolves itself largely into a law question in the end, and if we decide the law right it won't make much difference about the immaterial matters that may have crept in. [164]

Mr. Dockweiler: If your Honor for the whole general record would like such a stipulation, I am willing to make a stipulation provided that opposing counsel will permit this addition to the stipulation: That with reference to the cases for stockholders' liability against F. H. Dolan, Ed Kelly and L. J. Kelly there has been filed a demurrer on the ground that each of those causes of action is barred by the statute of limitations, on the ground that the statute runs from the date of the levy by the Comptroller and not the date of the maturity of the demand to pay; and if their theory is correct on the demurrer, of course, those stockholders' liability cases will be decided adversely on the point of law to the Comptroller or receiver.

Mr. Montgomery: I think our point of law is good, too, your Honor. I will accept the stipulation.

Mr. Dockweiler: Thank you. That is entirely agreeable, then, to us.

Mr. Montgomery: James Tuffree, Jennie Pomeroy, and M. Del Giorgio have paid their assessments.

Mr. Chipkin: Mr. Del Giorgio testified that he did not pay it; that he gave a note for it.

(Testimony of Roy De La Mare.)

Mr. Montgomery: No. He gave a note for the other thing that is involved here.

Mr. Chipkin: Oh, yes.

Mr. Dockweiler: You have got Del Giorgio for one.

Mr. Montgomery: Tuffree. [165]

Mr. Dockweiler: Tuffree for another.

Mr. Montgomery: Jennie Pomeroy.

Mr. Dockweiler: Jennie Pomeroy.

Mr. Montgomery: Minnie Baxter.

Mr. Dockweiler: Minnie Baxter.

Mr. Montgomery: And Yungbluth.

Mr. Dockweiler: And Yungbluth. They all have paid.

Mr. De La Mare: Yes.

Mr. Dockweiler: All right. It will be so stipulated, although I say again, your Honor, that I do not think that is material in view of the law on the matter.

Mr. Montgomery: We rest. [166]

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## DEFENSE

Mr. Dockweiler: Mr. Waldron, please take the stand.

W. J. WALDRON,

called as a witness on behalf of defendants, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. W. J. Waldron.

(Testimony of W. J. Waldron.)

Direct Examination

Q. By Mr. Dockweiler: Mr. Waldron, what is your occupation?

A. National Bank Examiner.

Q. Now you are a National Bank Examiner and have been such for how long?

A. With the exception of a period of four years, since 1922.

Q. Since 1922. Were you bank examiner for the district within which the Anaheim First National Bank is located at any time?

A. Yes; from the fall of 1930 until the present time.

Q. From the fall of 1930 until the present time. When did you first have anything to do with examining the Anaheim First National Bank?

A. I think in December, 1930.

Q. In December, 1930, succeeding who as examiner? [167]

A. R. Foster Lamm.

Q. Mr. Lamm, who was on the stand yesterday?

A. Yes.

Q. After late 1930 and up until the closing of the Anaheim First National Bank do I understand that you were the bank examiner under the Comptroller with reference to that bank?

A. Yes, sir.

Q. And followed its affairs as such bank examiner?

A. Yes.

Q. And made reports thereon to the bank and to the Comptroller?

A. Yes.



(Testimony of W. J. Waldron.)

Q. Do you recall ever having discussed with the bank officials of the Anaheim First National Bank or any of its directors the matter of its condition of impaired capital? A. Yes.

Q. When did you start discussing it with them?

A. Well, I would say probably immediately after or during my examination of December, 1930.

Q. Yes. Was that the result of the disclosures of the examination? A. Yes.

Q. And at that time what did you recommend or inform these gentlemen, the officers of the bank, would have to be done with reference to the financial condition of the bank? [168]

A. As I recall it, as early as that, late in 1930, there had been a program that was still in process of possibly increasing the capital stock of the bank and selling the stock at a premium to take care of the depreciation in the bond account.

Q. Did that program go through?

A. The program did not go through.

Q. Was there any alternate program discussed or suggested?

A. As I recall it, either at the time of my examination of June, 1931, or possibly somewhat prior to that, I had a discussion with Mr. W. A. Dolan, president of the bank, regarding a plan he had for raising additional money by selling the bond depreciation.

Q. Now, when did you first have a discussion with him on that subject, as nearly as you can fix it?

(Testimony of W. J. Waldron.)

A. Well, though I don't particularly recall it, I think there must have been some discussion in my prior examination because a program had been originated prior to that examination along that line, and my report of December, 1930, reflected the program that had been put into effect at a prior date.

Q. The program already put into effect?

A. Already put into effect.

Q. And what program was that?

A. That was the raising of some \$30,000 in the spring [169] or summer of 1930, represented by notes put in the bank's files.

Q. And that was to repair impaired capital?

A. Yes.

Q. Well, prior to discussing it with Mr. Dolan at the time you are now referring to did you discuss it with any other member or any other officer of the bank or director?

A. Well, undoubtedly I discussed it with Mr. Baxter who was an active officer in the bank. I doubt whether prior to June, 1931, I discussed it with any of the directors. I don't recall that I did.

Q. Do you remember whether Mr. Dolan told you precisely what the plan was, and did you say anything in reply to him?

A. Well, as I recall it, he told me that the plan was to collect \$175 a share from as many of the stockholders as they could.

Q. Did he tell you how much they expected to realize from that?

(Testimony of W. J. Waldron.)

A. In the neighborhood of \$115,000, as I recall it.

Q. Did he say how it was going to be raised, through what means?

A. Well, it would be in the nature of a **voluntary** payment, but along the line of a purchase of bond depreciation.

Mr. Montgomery: I think we should strike that "it would be in the nature of a voluntary payment" as a mere conclusion. [170]

The Court: Yes; it may be stricken. You will have to say what was said about it.

Mr. Dockweiler: Yes. If he used any particular words, you can use those, or the substance of his words, Mr. Waldron.

A. The substance of his words were that the funds to be raised were to be used to purchase the bond depreciation.

Q. Did he state who originated that plan?

A. Yes.

Q. Who did he say originated the plan?

A. Mr. Lamm.

Q. As a bank examiner of the experience you have had, had you ever heard of that method of curing impaired capital?

A. No; that was my first knowledge of it.

Q. Never with reference to any other national bank have you heard it? A. No.

Q. Did you say anything with reference to that as a feasible plant?

(Testimony of W. J. Waldron.)

A. I said that it might—essentially, that it might be possible; but that it also might be open to attack by the Comptroller's office.

Q. Did anything occur after that? Was there any further development or discussion of that problem that you recall, Mr. Waldron?

A. There was a rather continual discussion from the time of my examination in June, '31, up through the time that the [171] money was actually paid in, some time late in July, as I recall it.

Q. Yes.

A. Until it was finally put on the bank's books.

Q. Do you know whether all the money was paid in cash? A. It was not—not at that time.

Q. And the payments were spread out over a period, I take it?

A. The notes, as I recall it, 90-day notes were taken from certain of the contributors.

Q. Did you ever attend a directors' meeting at which this was discussed, and by directors' meeting I mean a formally gathered meeting where the gentlemen were all together in one room?

A. As I recall it, I think perhaps at my request a directors' meeting was held some time around the middle of July of 1931 which I think I attended.

Q. Which is the middle of July, 1931. Do you remember the discussion at that meeting? In other words, do you remember what was said?

A. Well, a considerable part of the money, or possibly all of the money that was eventually raised

(Testimony of W. J. Waldron.)

had been raised at that time. The matter of how the bookkeeping would be arranged, I recall that I was very insistent that if this plan of purchase of bond depreciation would go over, there must be a very definite method of bookkeeping as to the [172] particular bonds, the depreciation in the particular bonds that were purchased; and if there was any exchange, that the record follow clearly through, if there was any break in the record, and certainly if otherwise they could recover their money, they would not be able to unless they kept a very clear record.

Q. Did they ever keep any such record?

A. I think not on the official books of the bank. Whether they did by memorandum or not, I am not sure.

Q. Of course, you examined the bank at intervals thereafter, regular intervals? A. Yes, sir.

Q. How frequently?

A. Approximately once in six months.

Q. Once in six months thereafter. So far as you recall, they kept no set of books, that is, among the bank books?

A. I think not. They kept the record.

Q. Now, for any such plan did you ever receive any approval of this method of buying the bond depreciation? A. No.

Q. Did you ever receive any approval of it from the Comptroller's office in Washington?

A. No.

(Testimony of W. J. Waldron.)

Q. Or from any superior officer? A. No.

Q. Did you ever represent to these or ever tell any of [173] these officers or directors or anybody connected with the bank that this plan was approved by the Comptroller or would be agreeable to the Comptroller? A. No.

Mr. Dockweiler: Well, I think that is all from Mr. Waldron.

Mr. Montgomery: No cross examination.

Mr. Dockweiler: Thank you. May Mr. Waldron be excused?

Mr. Montgomery: Yes; he may.

Mr. Dockweiler: Now, I should like to call on the substantive defense Mr. De La Mare again.

[174]

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### ROY DE LA MARE,

recalled as a witness on behalf of defendants, having been previously duly sworn, was examined and testified as follows:

#### Direct Examination

Q. By Mr. Dockweiler: Mr. De La Mare, I want to ask you just one question—I hope it will be one question. Did this bank, so far as any records that the receiver has taken possession of and those in your charge—did the bank ever keep a record and an accounting of the depreciated bonds, or any group of depreciated bonds after June 24, 1931?

(Testimony of Roy De La Mare.)

Mr. Montgomery: I object to that as immaterial.

The Court: He may state what the records show.

Q. By Mr. Dockweiler: What do the records show, if you have knowledge of the records?

A. There is no record that we have found in the bank—that I have found in the records of the bank that would so indicate that there was any segregation made by anyone. The bond account was kept just the same before June 24, 1931, as it was afterwards.

Q. Were any lists made each six months or at other stated periods thereafter?

A. I found no record to that effect.

Mr. Montgomery: I object to that as immaterial.

Q. By Mr. Dockweiler: Now, was there any liability set up in the bank records—pardon me, I should not ask [175] another question until there is a ruling on this.

The Court: He has answered. Let it remain.

Mr. Dockweiler: I would say, your Honor, in defense of the question that it is predicated upon language used in this June 24th arrangement.

Mr. Montgomery: I may say in support of my objection that if the bank violated its agreement that does not relieve the receiver or the bank of responsibility.

The Court: Let it stand and exception shown. It has been answered.

Mr. Dockweiler: Now, the second question that I asked?

(Testimony of Roy De La Mare.)

(Pending question read by the reporter.)

Q. (Continuing) In connection with the depreciated bonds after June 24, 1931, different from the account prior to June 24, 1931? A. No, sir.

Q. At any time after?

A. Not that I found in the records of the bank.

Q. In other words, the way of carrying the books subsequent to June 24, 1931, was the same continuously as it had been prior to June 24th?

A. That is correct.

Q. So far as the records now in the possession of the receiver are concerned?

A. That is correct.

Q. And you assume that those records are all the records [176] of the bank? A. Yes, sir.

Mr. Dockweiler: That is all.

Mr. Montgomery: No cross.

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Mr. Dockweiler: May it be stipulated that Mr. Hogan would testify that there were no records obtained by him that would reflect other than what Mr. De La Mare has just testified to? In other words, that on that particular point Mr. Hogan—

Mr. Montgomery: Subject to our objection, we so stipulate.

The Court: Yes.

Mr. Dockweiler: In other words, he would testify substantially the same as Mr. De La Mare has



with reference to the matter on which Mr. De La Mare was just on the stand.

Mr. Montgomery: Yes.

Mr. Dockweiler: Thank you. One other thing I would like for the purposes of the record.

Mr. Montgomery: There is this exception: That the agreement was kept in the records.

Mr. Dockweiler: The agreement was kept in the records, was it?

Mr. Montgomery: Where did you get it?

Mr. Hogan: It was found in the bank files.

Mr. Montgomery: That is what we say.

Mr. Dockweiler: It will be stipulated that this Exhibit [177] A was found in the bank records at the time the bank was taken over by the receiver.

For the purposes of the records, your Honor, it seems to me we should have one other minute account introduced. We have the two letters, I find, but not the minutes, and heretofore we have entered both the minutes and the letters of the Comptroller and the president of the bank. Just for the purposes of connecting up the record I think probably they should be in.

Mr. Montgomery: Well, except——

Mr. Dockweiler: You see, we have introduced those letters.

Mr. Montgomery: Yes; that is right. All right.

Mr. Dockweiler: Then defendant offers as Defendants' Exhibit No. J a copy of the minutes of the directors' meeting of September 17, 1931, it being stipulated that a copy may be introduced, rather than the matter otherwise proven up.

Mr. Montgomery: So stipulated.

Mr. Dockweiler: With the full force and effect of full proof.

DEFENDANT'S EXHIBIT J  
MINUTE RECORD

Meeting Held on the 17th Day of September, 1931

The regular monthly meeting of the Board of Directors of the Anaheim First National Bank was held on the above date, President Wm. A. Dolan presiding.

Directors present were:

Wm. A. Dolan  
L. J. Kelly  
Frank Baum  
Ed Kelly  
Ernest F. Ganahl  
Ben Baxter  
F. H. Dolan  
J. H. Brunworth  
F. C. Rimpau  
J. J. Dwyer  
S. James Tuffree

Minutes of the last regular meeting were read and approved.

Loans from No. 6309 to 6377 were read and on motion by L. J. Kelly, seconded by J. H. Brunworth, were approved.

On motion by Fred C. Rimpau, seconded by Frank Baum, expense items for the month ending with the date of this meeting were approved.

A letter from the Treasury Department dated Aug. 20th and Mr. Dolan's reply thereto dated September 8th were read and ordered filed.

Adjournment,

WM. A. DOLAN,

President.

ROSS L. PHEGLEY,

Secretary.

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Then, your Honor, at this time defendant offers formally as Exhibits H and I the two documents heretofore marked for identification as Nos. H and I.

Mr. Montgomery: I would object to those as needlessly encumbering the record. If they could be introduced as [178] physical exhibits it might not be so bad, but there is a lot of immaterial matter here.

The Court: As illustrative of the witness' testimony, they may be considered; and if you can select such portions of them as you deem material—you say there are immaterial matters that you want to cut out——

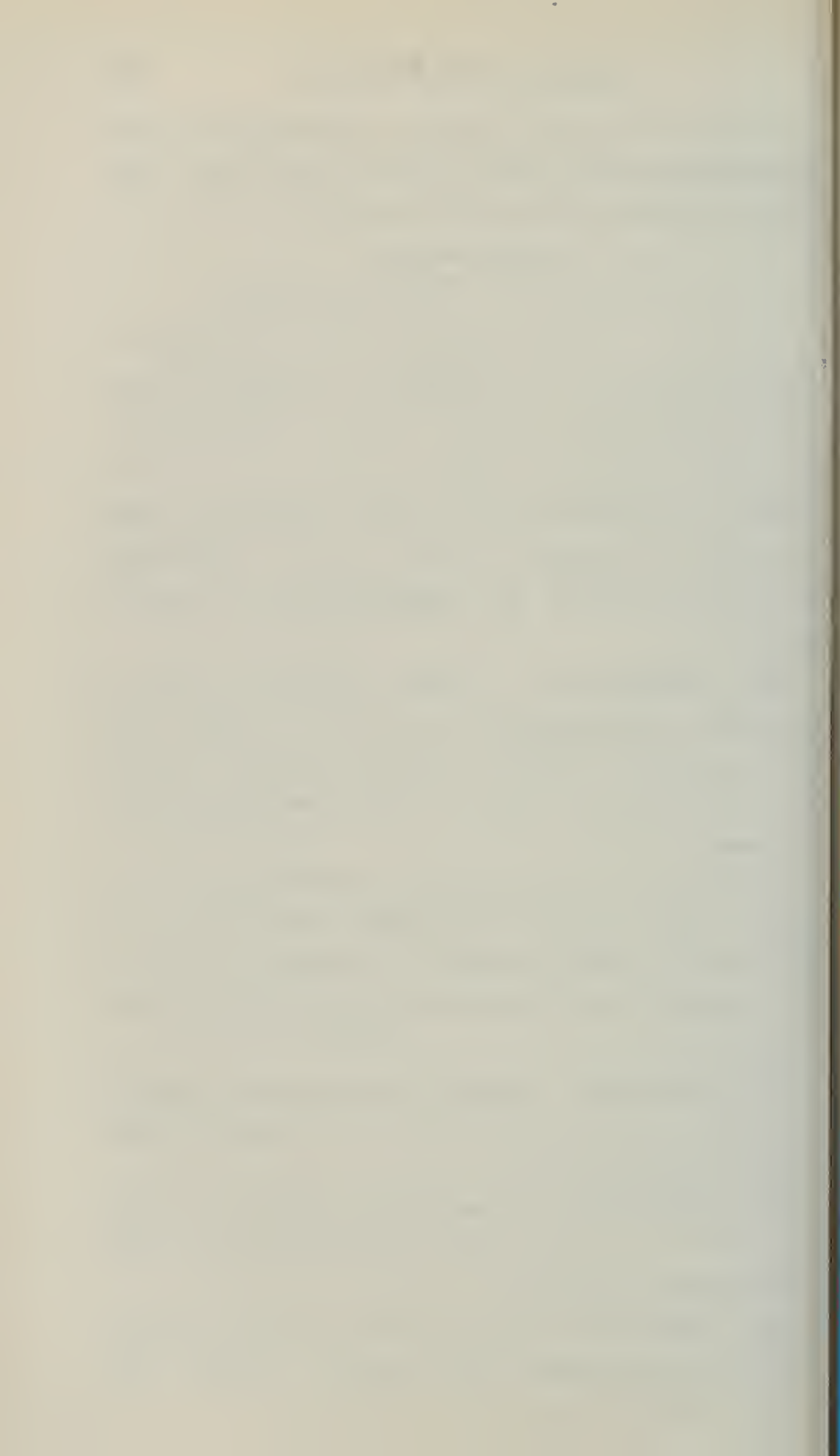
Mr. Dockweiler: It makes a composite whole. If your Honor would want to look over them, it would be difficult otherwise.

Mr. Montgomery: The point I make is, we would not want to copy this whole thing into the record.

The Court: Oh, no.

Mr. Dockweiler: No, no. As a physical record, without the necessity of the reporter copying it in.

The Court: Yes; it is so understood.



Par Value	Description	Book Value		December 16, 1932	Book Value After Partial Allocation of Contribution	Proceeds of Sales Prior to Suspension	Proceeds of Sales by Receiver	Exchanges	Market Value of Securities Still on Hand	Interest Accrued to October 18, 1934	
		July 20, 1931	October 21, 1932	Part of Contribution Allocated						Interest Collected	but Not Collected
		Book Value June 24, 1931	After Applying Contribution	Part of Contribution Allocated							
	<b>Securities Received for Exchanges Listed Above</b>		<b>Amount Charged to Bond Account</b>								
①	20,000 Cities Service Co.....	5-50	21,782.71						7,950.00	2,938.89	380.82
②	5,000 Associated Tel. & Tel.....	5½-55	4,240.73						2,737.50	412.50	128.08
③	5,000 Central Public Service.....	5½-49	5,256.25						25.00	296.39	608.77
④	8,000 Postal Telegraph & Cable Corp'n.....	5-53	5,251.05						3,360.00	1,000.00	119.45
⑤	15,000 St. Louis & San Francisco Ry.....	4½-78	14,850.00					Ⓓ 14,850.00		675.00	
⑥	5,000 McKesson Robbins Co.....	5½-50	4,950.00					Ⓓ 4,950.00			
⑦	10,000 Associated Gas & Elect. Co.....	5-50	9,000.00						1,725.00	1,000.00	106.85
⑧	5,000 Associated Tel. Utilities.....	5½-44	6,865.00						750.00	372.78	539.45
⑨	10,000 Alleghany Corp'n.....	5-49	10,000.00						5,700.00	1,000.00	190.41
⑩	5,000 Utilities Power Light Corp'n.....	5-59	6,529.33						1,275.00	766.12	53.42
⑪	5,000 International Tel. & Tel.....	4½-39	5,236.82						3,150.00	337.50	67.19
⑫	5,000 International Tel. & Tel.....	4½-52	4,887.50						2,712.50	450.00	67.19
⑬	5,000 New England Gas & Elect. Corp'n.....	5-50	4,794.18						2,875.00	500.00	116.44
⑭	3,000 New York, Ontario & Western R. R.....	4-55	3,000.00						1,620.00	360.00	45.70
⑮	2,000 New York, Ontario & Western R. R.....	4-92	2,000.00						1,292.50	243.11	10.30
⑯	5,000 New York Susquehanna & Western R. R.....	5-40	5,000.00						2,350.00	776.39	53.42
⑰	10,000 Denver Rio Grande & Western R. R.....	5-78	6,148.37						2,050.00	750.00	273.29
⑱	15,000 St. Louis San Francisco Ry. prior liens.....	4-50	15,451.61						2,025.00		1,006.85
⑲	5,000 Associated Tel. & Tel.....	5½-55	4,950.00						2,737.50	412.50	128.08
			<u>140,193.55</u>						<u>58,457.50</u>	<u>30,365.96</u>	<u>18,012.82</u>
				<u>48,678.09</u>	<u>28,936.87</u>				<u>3,377.35</u>	<u>37,545.00</u>	<u>134,902.41</u>

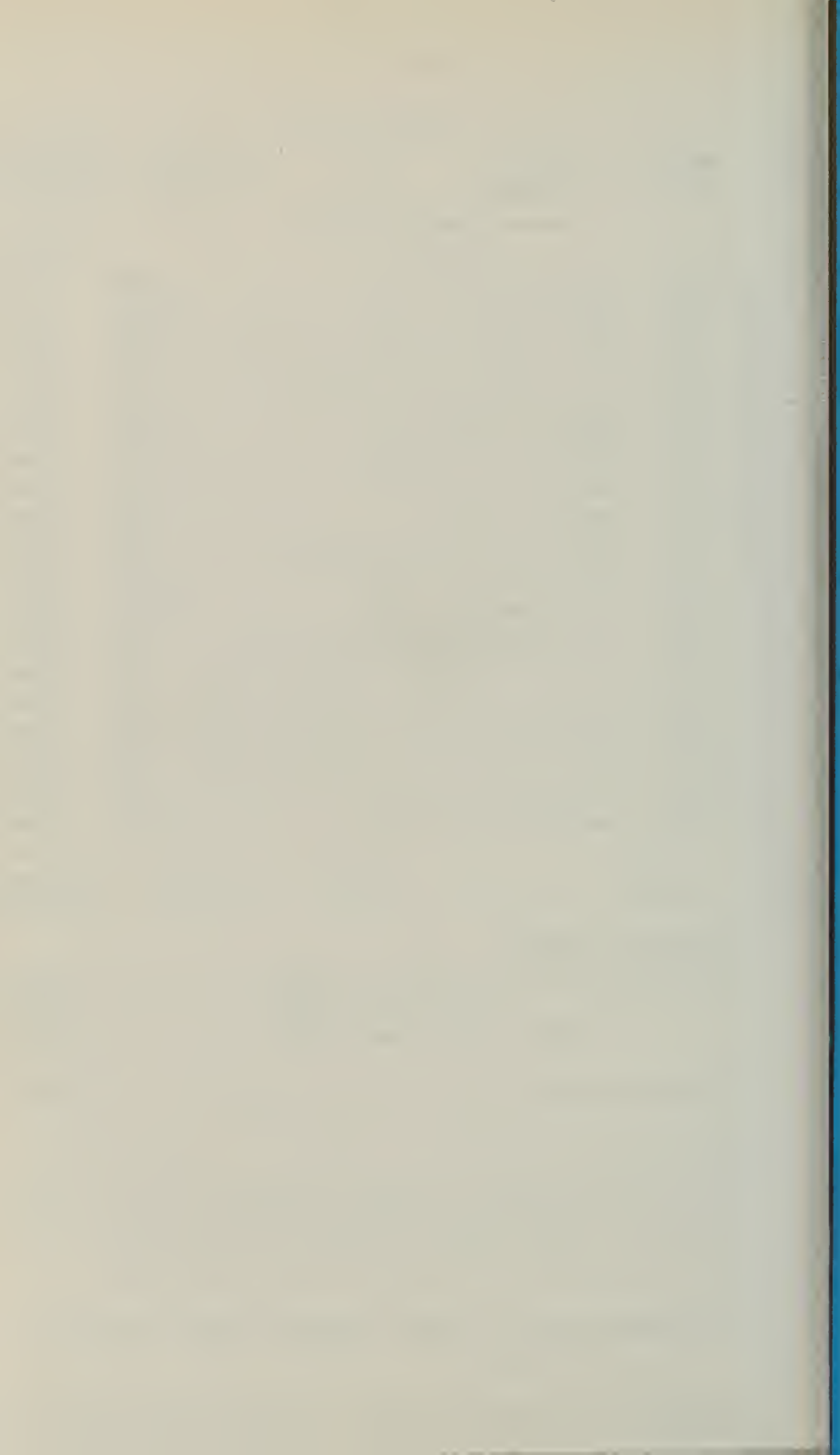
## Summary Analysis

Contribution allocated October 21-1932.....	48,678.09
“ “ December 16-1932.....	28,936.87
“ Unallocated at Receivership.....	33,035.04
<b>Total Contribution applied to bond account.....</b>	<b>110,650.00</b>

## Bonds on hand July 20, 1937

	Par Value	Description	Book Value 6-24-31	Present Market Value
Book value of bonds on which contribution to cover depreciation was made.....	21,000	American Natural Gas..... 6½-42	20,827.50	—
Less book value of bonds exchanged for other issues.....	5,000	Republic of Bolivia..... 7-58	3,612.50	400.00
	15,000	Consolidated Gas Utilities 6½-43	12,722.19	2,925.00
	5,000	Dept. of Cundinamarca..... 6½-59	4,662.50	700.00
Plus amounts set up in bond account for bonds acquired in exchanges shown above.....	8,000	Standard Telephone..... 5½-43	7,600.00	5,440.00
	5,000	St. Louis Gas & Coke Corp'n 6-47	4,525.00	700.00
	10,000	Denver Rio Grande & West. R. R. .... 5-78	6,147.37	2,250.00
Portion of Contribution credited to Bond account without allocation.....	2,000	N. Y. Ontario & West. R. R. .... 4-92	2,000.00	425.00
Book value of bonds after credit for contribution.....	15,000	St. Louis San Francisco Ry. Series A..... 4-50	15,451.61	3,750.00
Sales prior to suspension.....			3,377.35	
Sales by Receiver.....			37,545.00	
Present market value of remaining bonds.....			<u>58,457.50</u>	<u>\$77,549.67</u>
			<u>\$86,000.00</u>	<u>16,590.00</u>
Less credit for sales and market value as shown above.....			99,379.85	
Further depreciation or loss.....			107,541.13	

[Endorsed]: Defendants' Exhibit I. Filed July 21, 1937.



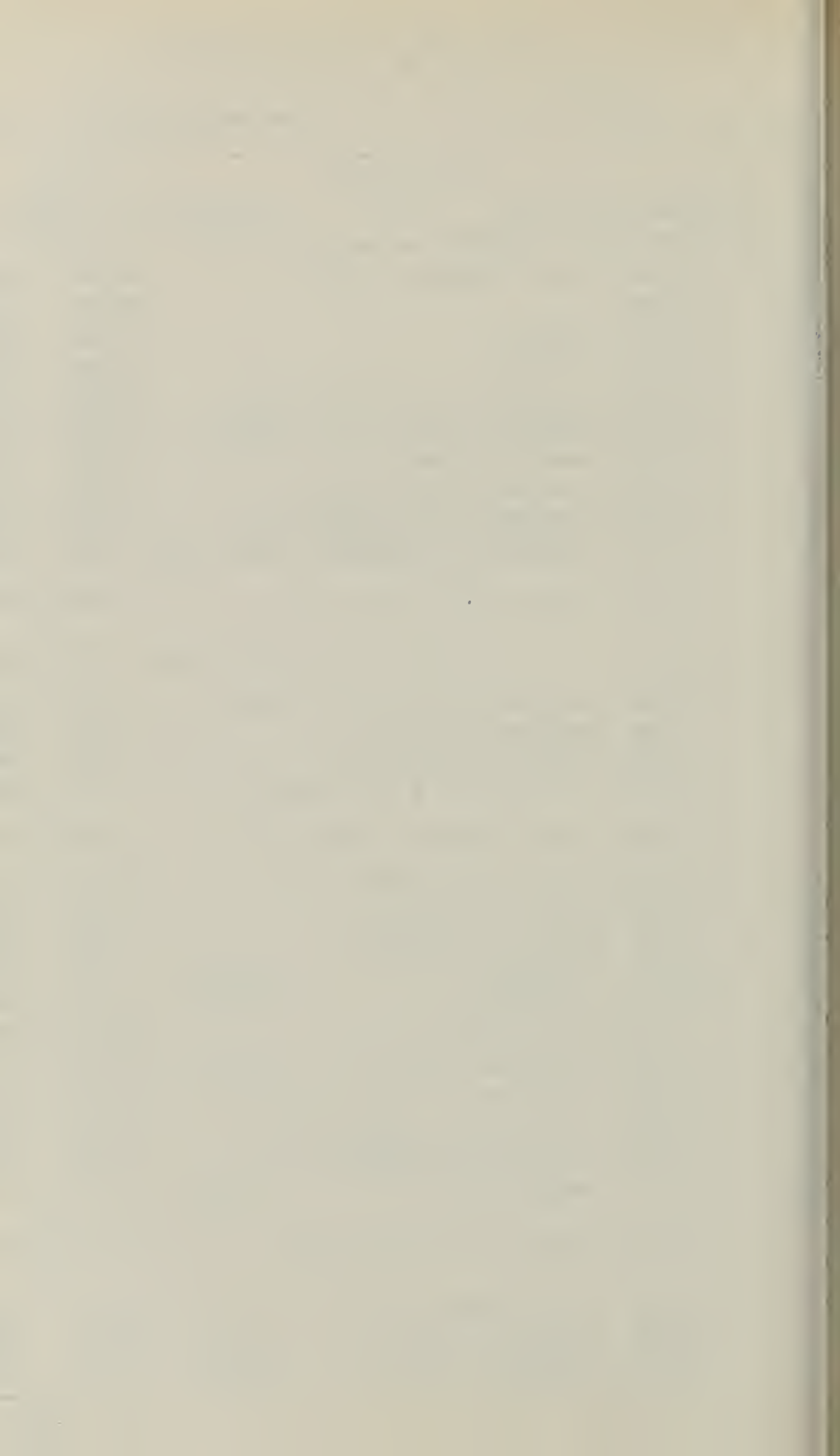
## DEFENDANTS' EXHIBIT I

Anaheim First National Bank, Anaheim, California

Securities involved in transaction whereby certain Stockholders contributed \$115,650.00 to purchase bond depreciation.

Par Value	Description	Book Value July 20, 1931	December 16, 1932		Book Value After Partial Allocation of Contribution	Proceeds of Sales Prior to Suspension	Proceeds of Sales by Receiver	Exchanges	Market Value of Securities Still on Hand	Interest Accrued	
			Book Value After Applying Contribution	October 21, 1932 Part of Contribution Allocated						Interest Collected	to October 18, 1933 but Not Collected
20,000	Merced Irrigation District.....	5½-65	10,000.00				4,671.20		}	5,172.44	
41,000	“ “ “ .....	6-45/60	33,191.75				10,043.80				
10,000	Oakdale “ “ .....	5-40	10,260.00				2,900.00			374.98	
9,000	Waterford “ “ .....	6-38/39	9,299.70				2,655.00			270.00	
20,000	American Commonwealth Power.....	5½-53	19,300.00				① 19,300.00			155.84	
21,000	American Natural Gas Corp'n.....	6½-42	20,827.50	20,512.50	315.00				52.50		4,842.94
5,000	Associated Electric Co.....	4½-53	4,700.00						1,787.50	675.00	67.19
10,000	Associated Public Utilities Co.....	5-47	9,100.00						4,575.00	1,500.00	149.31
20,000	Consolidated Gas Utilities Co.....	6½-43	16,962.94		12,010.21	4,952.73		② 4,240.73	937.50	1,300.00	2,482.45
15,000	General Water Works & Elect. Corp'n	6-44	14,287.50		12,547.50	1,740.00			1,650.00	900.00	2,293.15
10,000	National Public Service Co.....	5-78	10,000.00					③ 5,000.00			125.00
								④ 5,000.00			
20,000	Power Gas & Water Securities Corp'n	5-48	19,800.00					⑤ 14,850.00			625.00
10,000	Rochester Central Power Corp'n.....	5-53	9,000.00					⑥ 4,950.00			
5,000	Republic Gas Corp'n.....	6-45	6,865.00					⑦ 9,000.00			208.33
8,000	Standard Telephone Co.....	5½	7,600.00					⑧ 6,865.00			
15,000	St. Louis Gas & Coke Corp'n.....	6-47	14,525.00					⑨ 10,000.00	1,920.00	660.00	864.33
5,000	United American Utilities Co.....	6-40	6,465.00					⑩ 6,465.00	250.00	1,050.00	563.84
10,000	United Public Utilities Co.....	5½-47	9,775.00					⑪ 4,887.50			
5,000	Berlin City Electric.....	6-55	4,462.50					⑫ 4,887.50			551.25
5,000	Berlin City Extension.....	6-58	4,784.16								717.67
10,000	Chile Railway .....	6-61	7,657.94	5,262.94	2,395.00	2,095.00			1,812.50		600.00
5,000	Rio Grande du Sul.....	6-68	3,637.50	3,287.50	350.00				1,725.00		
5,000	City of Rome.....	6½-52	4,794.18						712.50		
5,000	City of Sao Paulo.....	6-68	3,690.00	3,190.00	500.00			⑬ 4,794.18			325.00
5,000	Department of Cundinamarca.....	6½-59	4,662.50						1,150.00		
10,000	American Beet Sugar.....	6-35	8,932.51							700.00	261.10
5,000	F. & W. Grand Properties, Inc.....	6-48	4,779.16		4,379.16	400.00			9,425.00	1,890.67	865.27
10,000	Lautaro Nitrate Co.....	6-54	9,475.00	9,275.00	200.00				1,950.00	150.00	852.33
10,000	Louisiana & Arkansas Ry.....	5-69	10,000.00						1,200.00		
								⑭ 2,000.00			
								⑮ 3,000.00			237.50
5,000	Pacific Western Oil Co.....	6½-43	4,862.50					⑯ 5,000.00			
5,000	Pacific Steamship Co.....	6½-33	4,970.00	3,687.65	1,282.35	1,282.35					
5,000	Republic of Bolivia.....	7-58	3,612.50	3,462.50	150.00						325.00
								⑰ 4,862.50			
									300.00		1,136.30
			312,279.84								

Contribution of \$110,650.00 by Stockholders, to bond account without allocation July 20, 1931.





Mr. Dockweiler: And just one other thing that I want to ask, probably that can be introduced by way of stipulation, and that is the minute record of the annual meeting of stockholders of January 12, 1932. And I will state frankly the reason for the request, and it is this: That there is a general motion presented by Mr. Dolan and seconded by Mr. Kelly that all and singular actions of the officers of the bank for the past year be and they are hereby ratified, confirmed and approved, which motion was carried.

Mr. Montgomery: Well, that would be immaterial, your Honor. [179]

Mr. Dockweiler: With reference to the stockholders it might be of some materiality, your Honor.

Mr. Montgomery: For a subsequent time involved, 1932, and the contribution was made in 1931, six months prior thereto; and there is no showing here that the stockholders in question, I mean who have brought these suits, were present. It simply says there were 391 shares, 245 shares being represented by proxy. Now, Miss Baxter does not show on the record to have been present, nor her mother, nor Del Giorgio.

Mr. Dockweiler: Well, it seems to me in respect of the transactions of a national bank, which is in a peculiar position with reference to third parties creditors, parties to whom representations are held out as to financial security, that these resolutions are of some significance, your Honor—more so than they would be in the case of private corporations

that are not vested with the peculiar fiduciary capacity of a national bank.

The Court: I am very doubtful about it. It may be filed, subject to the objection and exception, and the record may show, if counsel desires, a motion to strike is made now.

Mr. Montgomery: Yes, your Honor.

The Court: And that is submitted.

Mr. Montgomery: I think that their stockholders' meeting—may I look at that there?

The Clerk: That is Exhibit K. [180]

## DEFENDANT'S EXHIBIT K MINUTE RECORD

Meeting Held on the 12th Day of January, 1932  
ANNUAL MEETING OF STOCKHOLDERS

The regular annual meeting of the stockholders of the Anaheim National Bank was held on the above date, in conformance with Section One of the By-Laws.

The meeting was called to order by Wm. A. Dolan and on motion by Frank Baum, seconded by J. H. Brunworth, J. J. Dwyer was chosen to act as chairman and on motion by L. J. Kelly, seconded by Frank Baum, Ross L. Phegley was chosen to act as secretary.

The secretary called the roll and it was ascertained that stockholders were present owing and holding 391 shares and 245 shares were represented by proxy. The number being sufficient to constitute

a quorum the chairman declared the meeting open for the election of a Board of Directors for the ensuing year and for the transaction of such other business as might properly come before the meeting.

Minutes of the stockholders' meeting of January 13th, 1931, were read and approved.

On motion by Wm. A. Dolan, seconded by L. J. Kelly, it was resolved: That all and singular actions of the officers of the bank for the past year be and they are hereby ratified, confirmed and approved. Carried.

Moved by Wm. A. Dolan that Board of Directors be reduced from fifteen to eleven. Seconded by Frank Baum and carried.

The following were nominated to serve as Directors for the ensuing year:

J. J. Dwyer

Wm. A. Dolan

S. James Tuffree

Ed Kelly

J. H. Brunworth

L. J. Kelly

Frank Baum

F. C. Rimpau

J. W. Truxaw

Ben Baxter

F. H. Dolan

Moved by J. H. Brunworth, seconded by Ed Kelly, that nominations be closed. Carried.

Moved by L. J. Kelly, seconded by Ben Baxter, and carried, that the By-Laws pertaining to the

election of Directors be hereby suspended and that the secretary be hereby instructed to cast the entire ballot for the nominees. The secretary thereupon cast the ballot as directed and the nominees were declared elected.

There being no further business to be acted upon, on motion the meeting adjourned.

WM. A. DOLAN,  
President.

ROSS L. PHEGLEY,  
Secretary.

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Mr. Montgomery: I think that is also objectionable as being subsequent. However, I take it that your Honor is receiving these items of evidence to sift them out hereafter.

The Court: Yes.

Mr. Montgomery: As to what really bears on it and what does not.

The Court: I will consider any objection that you may point out to any matter when introduced.

Mr. Montgomery: I might make the motion at this time to strike all immaterial matter, so it can be submitted; and, of course, in making findings, why, I think it will clear up what has been considered and accepted more than anything else.

The Court: Well, I would not want an omnibus motion of that sort; that is, your motion to strike ought to be specific, as directed to certain things.

Mr. Montgomery: I might make a motion to

strike those matters of evidence to which I have heretofore objected and that have been received.

The Court: You may put it in that form, then.

Mr. Dockweiler: Just before we close, may I ask to look at the records, that is, the exhibits? One further thing, your Honor: We should like at this time—and I think it can be done by stipulation—to introduce a report of the condition of the Anaheim First National Bank at the close of business on **June 30, 1931**, purporting to be signed by [181] Phegley, cashier, and by three of the directors in the ordinary form required by reports, quarterly reports I think they are on national banks.

Mr. Montgomery: For what purpose?

Mr. Dockweiler: The purpose of which is to show that the bonds were carried as an asset.

Mr. Montgomery: I don't care to have this whole report go in for that one item.

Mr. Dockweiler: May it then be stipulated that a report of the condition of Anaheim First National Bank as of the close of business June 30, 1931, was duly prepared and filed by the bank with the Comptroller's office, showing United States government securities owned under resources of the bank in the total sum of \$59,349.38 and "other bonds, stocks and securities owned" under resources at \$387,389.80?

Mr. Montgomery: As far as material, that stipulation is accepted.

The Court: Very well.

Mr. Dockweiler: Yes. And that this sum of three hundred eighty-seven and some odd thousand dollars refers only to bonds?

Mr. Montgomery: Yes. Yes; that is right.

Mr. Dockweiler: The defendant closes, your Honor.

Mr. Montgomery: We have no rebuttal, so we also rest. How would your Honor like to handle this?

The Court: I will accommodate myself to your plans. [182]

Mr. Montgomery: My suggestion is that there is a good deal of testimony and evidence in here which perhaps should be studied, and if we could have time to file briefs, I think the fact issues are so comparatively simple that it would not be necessary to—

The Court: Mr. De La Mare's testimony, do your exhibits show the figures that he gave and the classifications of the items?

Mr. Montgomery: I think they do, your Honor.

Mr. Dockweiler: I think your Honor will find that they do.

The Court: I was going to say, if they did not I was going to ask to have his testimony written out. I have quite full notes on most of it.

Mr. Montgomery: Then, if your Honor would say 20, 20 and 10?

The Court: Yes; you might as well.

Mr. Dockweiler: I wonder, your Honor, if it would not be simpler for your Honor to hear some

oral argument on the matter. The cases, I think it will be frankly admitted, are relatively few.

The Court: I am willing to if you want.

Mr. Dockweiler: I would prefer to argue it orally if I may.

Mr. Montgomery: All right; we will let them argue, then.

Mr. Chipkin: As far as the facts are concerned.

[183]

Mr. Montgomery: But I want to analyze the proposition afterwards, so opening argument waived. Have we got it now entered so I do not have to take it up, that we have 20, 20 and 10?

The Court: Oh, yes; that may be understood.

(Oral argument of counsel not transcribed.)

[184]

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I hereby certify that on the 20th and 21st days of July, 1937, I was the duly appointed and acting shorthand reporter in the United States District Court for the Southern District of California, Central Division, before the Hon. William P. James, and that as such reporter I took down in shorthand writing the proceedings had on those days in the cause entitled L. J. Kelly, et al., Plaintiffs, vs. Anaheim First National Bank, etc., et al., Defendants, being numbered Law No. 7522-J; that thereafter I caused to be transcribed into typewriting under my supervision and direction my shorthand notes of said proceedings.

I certify that the foregoing pages numbered from 1 to 184, both inclusive, are a full, true and correct transcript of my shorthand notes so taken down as aforesaid, and that the same is a full, true and correct transcript of said proceedings hereinabove mentioned.

Dated this 25th day of May, 1939.

A. H. BARGION

[Endorsed]: Filed Oct. 17, 1938.

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[Endorsed]: No. 9020. United States Circuit Court of Appeals for the Ninth Circuit. L. F. Kelly, F. H. Dolan, et al., Appellants, vs. Anaheim First National Bank, a National Banking Association, and J. V. Hogan, Receiver, Appellees. Supplemental Transcript of Record (Reporter's Transcript and Exhibits). Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed May 27, 1939.

PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.



United States Circuit Court of Appeals  
for the Ninth Circuit.

No. 9020

L. J. KELLY, F. H. DOLAN, BEN BAXTER,  
et al.,

Appellants,

vs.

ANAHEIM FIRST NATIONAL BANK, a Na-  
tional Banking Association, et al.,

Appellee.

DESIGNATIONS FOR SUPPLEMENTAL  
TRANSCRIPT OF RECORD

Come Now, the Appellants, and, pursuant to that certain order made by this Honorable Court in this Cause on the 10th day of May, 1939, designate all of the Reporter's Transcript of Testimony and Proceedings on Trial, pages 1 to 184 (all inclusive) thereof, together with the Reporter's Transcript of Copies of Plaintiffs' Exhibits 1, 2, 3, 4, and Defendants' Exhibits A, B, C, D, E, F, G, H, I, J, K, pages 1 to 31 (all inclusive) thereof, all of which may, and shall be, printed as the Supplemental Transcript of Record in this Cause. This, together with the original Transcript of the Record now on file in this Cause, to constitute the Transcript of Record on Appeal.

Dated: June 1, 1939.

EDW. C. PURPUS,

By [Signature Illegible]

Attorney for Appellants.

## POSTAL TELEGRAM

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DE LOS ANGELES CALIF 1

Paul P. O'Brien, Clerk U. S. Circuit Court of  
Appeals

Post Office Building San Fran 1068

Re case of Kelly versus Anaheim First National Bank. As attorneys for Appellee we consent to the printing of whole of Reporter's Transcripts of Testimony and Proceedings on Trial and of plaintiffs' and defendant's exhibits, same to be used as Supplemental Transcript of Record.

DOCKWEILER &amp; DOCKWEILER

[Endorsed]: Filed June 2, 1939. Paul P.  
O'Brien, Clerk.